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ABSTRACT

These meetings of the American Indian Policy Review Commission were concerned with the markup of various sections of the final report, some sections having to do with Indian law, Indian history, Indian education, Alaska Natives, and funding of Indian programs. On February 25, there was a discussion of education recommendations including one on the consolidation of Indian education programs into a consolidated Indian agency. Another recommendation was directed at the real adjustment of the funding mechanism on Indian education money. Four specifics were included in this recommendation: (1) the authorization of a tribal monitoring system through which impact aid would be passed through to the local tribes with a settlement of administrative expenses to have some influences on the education of Indian children: (2) an amendment to the Indian Self-Determination Act, which would authorize an elected board of regents representing many tribes to administer certain types of institutions: (3) amendments to Public Law 93-638 and the Johnson-O'Malley Act: and (4) action for the proper utilization of Johnson-O'Malley Act funds. (AN)

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U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

FEBRUARY 24, 25, MARCH 4, MAY 12, 13, AND 16, 1977

WASHINGTON, D.C.

VOLUME 6

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

THURSDAY, FEBRUARY 24, 1977

AMERICAN INDIAN POLICY REVIEW COMMISSION.
Washington, D.C.

The Commission met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Senate Office Building, Senator James Abourezk (chairman of the Commission) presiding.

Present: Senator James Abourezk, chairman; Commissioners Ada Deer; John Borbridge; Adolph L. Dial; Louis R. Bruce; Jake Whitecrow; and Congressman Don Young.

Staff present: Ernest L. Stevens, staff director; Ernestine Ducheneaux; Peter Taylor; Paul Alexander; Donald Wharton; Charles Wilkinson; Dr. Patricia Zell; Max Richtman; Gil Hall; Alan Parker; Karl Funke; Chuck Downs; Dexter Brooks; Fred Martone; and Winona Jamieson.

Chairman ABOUREZK. The American Indian Policy Review Commission meeting will come to order.

Ernie, do you want to give the administrative report? You have 3 minutes in which to do it, according to your own timetable.

Mr. STEVENS. You have a copy of the progress report.

Chairman ABOUREZK. Before you do it, we had better establish the fact that a quorum is present.

Will the clerk call the roll.

Ms. JAMIESON. Commissioner Borbridge?

Commissioner BORBRIDGE. Here.

Ms. JAMIESON. Commissioner Bruce?

Commissioner BRUCE. Here.

Ms. JAMIESON. Commissioner Deer?

Commissioner DEER. Here.

Ms. JAMIESON. Senator Hatfield?

[No response.]

Ms. JAMIESON. Congressman Meeds?

[No response.]

Ms. JAMIESON. Senator Metcalf?

[No response.]

Ms. JAMIESON. Commissioner Whitecrow?

Commissioner WHITECROW. Here.

Ms. JAMIESON. Congressman Yates?

[No response.]

Ms. JAMIESON. Congressman Young?

Congressman YOUNG. Here.

Ms. JAMIESON. Chairman Abourezk?

Chairman ABOUREZK. Here.

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Is there a quorum present?

Ms. **Jamieson.** Yes.

Chairman **Abourezk.** How many members?

Ms. **Jamieson.** Six members present.

Commissioner **Dial.** I don't think they called my name. I am present.

Chairman **Abourezk.** Seven present.

All right, Ernie.

Mr. **Stevens.** I am going to have Max do part of the administrative report.

The only thing that I wanted to emphasize that is in the progress report, and some of the other things, is that we are asking the Commission's indulgence on it.

We are trying to get the first cut of this whole thing done so that we can have one set. So that what we can do is give the Commission some time, after the 30-day period in which the tribes, State organizations, and so on, review this report.

And so, in order to do that, we need to keep pushing chapters at you so we have one thing. And we just ask your indulgence.

After the 30-day period is up, which is approximately April 16—from April 16 to the 21st—we will consolidate the comments that are coming back in and categorize them by groups.

Also, the staff will then make recommendations as to changes. And then we will have, at least, if necessary, two equations in which the Commission can actually finalize and finally vote on the report.

That is the remaining schedule.

Max, do you want to carry on?

Mr. **Richtman.** There are two task force reports that are yet to be printed and delivered to the Commission's office—task forces 5 and 9.

We have been assured by the Government Printing Office that we will have those around March 10 or 11, and we will distribute them as soon as we get them.

We just received task force 2—tribal government. I brought over about 15 copies for the Commissioners and I will distribute them in a few minutes. We will mail out the rest within the next few days.

The Indian Commissioners have also requested 10 complete sets of all the task force reports, plus the BIA study and the special study on Alaska. I will put those together and we will be mailing them out tomorrow to all the Commissioners.

The Commissioners also requested five sets of the transcripts of all our Commission hearings and meetings, and I have arranged to distribute them as soon as we get them. We are just getting proofs now from the November transcript.

The Government Printing Office hasn't provided us with the estimate as to the cost of the graphic displays that we would like included in the report, and when they do that, we will be able to submit a concurrent resolution in the Senate and the House to get the authorization to include those kinds of displays in the report.

I have also made arrangements with the Government Printing Office so that each Commissioner will receive a hardbound copy of the final report with his or her name engraved on the cover.

In order to get additional copies of the report for the Commission's use, Senator Abourezk will have to introduce, or will have to make a unanimous consent request on the floor, for an additional 1,000 copies or whatever figure we arrive at, for the use of the Commission. Once we submit the report it becomes the property of the Congress and no copies are provided to the Congress.

Chairman **Abourezk.** Well, you draft that request and I will take it over.

When should that be done?

Mr. **Richtman.** As soon as possible.

Chairman **Abourezk.** If you will draft it, I will do it either today or tomorrow.

Mr. **Richtman.** All right.

The Government Printing Office will also print about 1,500 copies of the report which will be sent to the depository libraries and the Library of Congress as well as the House and Senate documents rooms.

We still expect to distribute the draft of the final report on March 16. We are now in the process of reducing the mailing list to a matchable number.

We have about 1,600 organizations and people on the mailing list, and we are trying to cut that down to around a thousand.

The amendment increasing the Commission's authorization and extending the time for submission of other reports to Congress, passed the Senate on February 3, the House on February 9, and was signed on February 17.

It is Public Law 95-5.

Chairman **Abourezk.** Then we are no longer living in sin. Right?

Mr. **Richtman.** That is right. Ernie and I appeared before the House Legislative Appropriations Subcommittee to justify the supplemental appropriations of $100,000. We received a letter from the chairman of the Senate Legislative Appropriations Subcommittee.

They haven't set a date yet for us to appear, and it is not clear that we will even have to appear. We may just get by with the submission.

The GAO Audit Commission audit that was discussed in September of 1975 is nearly completed. On August 5, 1976, the chairman sent a letter to the General Accounting Office requesting the examination of the Commission's financial and other budgetary items to be carried out.

On February 9, the GAO conducted the investigation and they had an oral briefing with Ernie and some of the other staff people.

The overall conclusion was very positive. They felt that we maintained excellent financial accounting and budgetary control systems.

There were a few problems that they recognized and they are drafting a report which is just a first draft. They will submit that March 15 and we will have a chance to respond to it and clarify any differences that we feel exist, with our interpretation of the way things happened. They will draft a report that will be open to the public.

I think that is about all. The staff will be much smaller in a few more days. A lot of the people here will be leaving at the end of this month, and you will have a very small staff to distribute the report and to do some editing work.

Chairman **Abourezk.** Thank you very much.

Any questions?

Commissioner Borbridge. I note that we contemplate that on April 16, that will be our closing date for comments by tribal groups and other interested individuals and groups.

These comments will be summarized by April 21 and the report, based on the 30-day review, mailed to the Commission April 25, and the next date for meetings of the Commission are scheduled for May 9 and 10.

The question I have is: Is there sufficient provision made for disposition of the added recommendations that will be coming as a result of the 30-day review period?

How, mechanically, is it intended that the Commission will dispose of such recommendations as may result following the 30-day review period?

Mr. Stevens. From April 16 to 21, we will consolidate all of the recommendations by group, and we will submit that through the mail prior to that meeting in May. Then we will make recommendations on changes, and that will be the subject of that meeting.

We will have that in a specific kind of way. If you recall, we were asked to consolidate that input from the various groups and append it to the final report.

So, it will be published with the report, and we have to have it in that condition.

We are categorizing the groups and we are going to divide it by issue before it comes back.

So, as they come in, we will consolidate them. So the material that you will get, related to the results coming from the field, will be rather specific and rather at length, and will be separate from the recommended changes and text.

Commissioner Borbridge. Thus, we can anticipate that the consolidated material will be presented to the Commission for its disposition and will be made a part of the final record?

Mr. Stevens. Yes, sir.

Commissioner Borbridge. Thank you.

Chairman Abourezk. Are you ready for chapter 13?

Mr. Stevens. Yes, sir.

Chairman Abourezk. All right. Paul, go ahead.

Mr. Alexander. One brief comment before that.

We now have chapter 5 available for distribution. It will be handed out to you in the next few minutes, and that is scheduled for Saturday.

Chapter 13 contains, at the current time, three sections. The thrust of all the recommendations were presented to you in November. There are no significant changes, and I will run through each section quickly.

The first section concerns the state of knowledge concerning Indian affairs and the public in general. Specifically, amongst those persons who find themselves administering Indian programs or interacting with Indian communities as part of local governments or Federal service structures.

Our feeling, throughout the entire report, is that there is a gross misunderstanding of Indian law.

Indian history: There are two recommendations. One directed to the Federal Government to require mandatory training programs in the subjects I just mentioned of all Federal employees dealing in Indian programs and that that be attached to Federal grants to the State and local governments as a training requirement for State and local government employees dealing with Indian affairs.

Chairman **Abourezk.** That would not be mandatory at the State level?

Mr. **Alexander.** It would be mandatory, attached to specific Federal programs.

Chairman **Abourezk.** All right. What about school curriculum?

Mr. **Alexander.** That was the second recommendation.

Chairman **Abourezk.** How would that be handled? That could not be mandatory, of course, but we would make it so that Federal funds would be available to any school that wanted to institute the programs, right?

Mr. **Alexander.** We asked for sufficient resources to be allocated for comprehensive programs to be developed and evaluation of 16 curriculums and the establishment of model curricula which local schools could adopt.

That is on page 4, No. 2.

There is one addendum to these two recommendations that came up in discussion in the last several days, and that is something of the executive branch departments already have existing authority to implement training programs. And so, as an interim, we would like to add that the Federal agencies with such authority should implement the appropriate training programs.

Interior, for example, would have such authority.

Chairman **Abourezk.** Any questions?

Commissioner **Bruce.** So what we are saying is that rather than by legislation, we are talking about implementation at all the agencies?

Mr. **Alexander.** As an interim measure, also, that there should be some specific congressional legislation of those agencies that, with current authority, should still go ahead under that current authority and establish a training program.

Chairman **Abourezk.** On page 1, "there is throughout most levels of governmental society, substantial ignorance of information."

I understand what the word ignorance means, but I wonder if we might not replace that or strike it altogether, and just use the word "misinformation"?

Mr. **Alexander.** That will cover it.

Chairman **Abourezk.** Is there an objection to that from the members?

Strike the word "ignorance," and without objection, those two words are stricken.

Are there any other questions or comments on this section?

I will entertain a motion, then, to adopt it.

Mr. **Martone.** On page 4, paragraph 2, "It is proposed that Congress, by appropriate legislation, provide a model curricula which accurately reflects Indian history, tribal status, and Indian culture."

Is this a precedent that is being set? I have never fully understood how the Government is going to write and describe the accurate history so that that accurate party line, if you will, can be promulgated under the legislative scheme so that school systems will adopt it.

Isn't there a hazy interface here between the Government and education?

Chairman **Abourezk**. No, that is why I asked if it couldn't be mandatory, obviously. But, I did some hearings 2 or 3 years ago in South Dakota on the subject of curriculums in State schools, where both teachers and students had the need to learn more about Indian people themselves, as far as coming down the races, and facts, and so forth.

It came out during those hearings that the best thing would be for the State board of education to promote curriculums that would create understanding of the Indian people and get away from stereotypes—that would be the most necessary thing to do by just teaching what actual Indian culture and Indian religion amounts to.

That is what my understanding is, that this is what it presumes to do.

Mr. **Martone**. My concern is not the Government programs which seek to aid in the definition and the social studies which may be necessary, but who is going to write the curriculums?

Chairman **Abourezk**. I suppose the Indian historians will write them. The trouble is, there is no Indian history that is in existence right now that is taught in any school.

I assume you could get almost any historian—I use the word objective or subjective historian, because I don't believe any historian is subjective—but I think the existence of a history of any kind would be a good beginning.

Mr. **Martone**. I understand what you are saying, but my only concern is it seems to me that accuracy would best be served by historians and educational institutions each performing the task, perhaps stimulated by congressional legislation, which would provide the funds necessary for such a concern, but it would be best that they do it rather than the Government.

But what I guess I am saying is I think it would be unfortunate if the Government were to purport to write a definitive history on this subject, and then promulgate that as a model curriculum for all the schools in the United States.

Chairman **Abourezk**. I don't think this says the Government does it, but if you have some language that you want to propose in that literature, and we will adopt it if it will say what we all want to say, that it will change this language.

Mr. **Martone**. At the moment I don't, but perhaps the Congress ought to by grant, or otherwise, finance research on Indian law and history, but not itself promulgate that history.

Chairman **Abourezk**. What I am saying, Fred, is: I don't think we contemplate that at all, and I don't think anyone else contemplates that.

At this time, it is just a matter of how you understand this language. Isn't that right?

Mr. **Martone**. That satisfies me.

Chairman **Abourezk**. Let me just direct the staff, then, to make that more clear.

We all understand what we mean by it. The Government isn't going to write the history, but funds will be provided so that a history can be written.

That is simple enough.

With that amendment, and we will ask for the specific language from the staff on this, then, and I will entertain a motion for adoption of this section.

Commissioner **Deer**. Mr. Chairman, I so move.

Commissioner **Bruce**. I second.

Chairman **Abourezk**. All those in favor of adopting this section, then, with the amendments, raise your right hand.

It is unanimous. There are seven votes for and none against.

The next section.

Mr. **Alexander**. Section B is pursuant to the legislation establishing this Commission which requires a look into alternative elective bodies.

Task force 3 was delegated that responsibility.

Chairman **Abourezk**. What page is that on?

Mr. **Alexander**. The findings and recommendations are on page 5. There is a typo, there, which I will get to in a minute.

Task force 3, Federal administration task force, delineated the number of proposals which this chapter repeats, and recommended that no action at this time be taken by Congress, and that any recommendations in this area should be generated by the tribes, themselves.

We are adopting those recommendations.

That last sentence should read, "No congressional action is appropriate at this time."

Chairman **Abourezk**. All right. The amendment, without objection, will be adopted.

Can I make another suggestion, that you put that particular sentence above the one saying, "With the tribes . . . " instead of putting it after. Just switch the order.

Is that all right with you?

Mr. **Alexander**. Sure. It seems to make more sense that way. All right.

Chairman **Abourezk**. Are there any questions or comments regarding this section?

If not, is there a motion?

Commissioner **Deer**. I so move.

Chairman **Abourezk**. It has been moved.

Commissioner **Dial**. I second.

Chairman **Abourezk**. All those in favor of adopting this section, please raise your right hand.

The vote is six in favor.

Those opposed?

There is one abstention. Six in favor, one abstention. Actually, one talking.

Congressman **Young**. I will vote.

Chairman **Abourezk**. All right.

The next, section C.

Mr. **Alexander**. Consolidation, revision, and codification of Federal Indian law—Mr. Taylor.

Chairman **Abourezk**. What page are you on?

Mr. **Alexander**. The recommendations are on page 13, the last page of that chapter.

Mr. **Taylor**. Essentially what this section of this chapter does is simply recommend that the work of Task Force No. 9—that was directed towards revision and consolidation of Federal Indian law, primarily streamlining title 25—be referred to an appropriate committee so that the follow-through or the completion of that work can be carried out.

The three recommendations that appear on page 13 suggest possibly a joint select committee. I think we are all aware of the reorganization that is occurring on the Hill. So, I would assume that the committee that would receive this referral would be the Senate Select Committee on Indian Affairs.

Chairman **Abourezk**. May I make a suggestion?

No. 1 recommendation: That referral should be to appropriate committees in the Senate and the House rather than trying to specify because the committees are already established.

Mr. **Taylor**. Which word would we be changing, there—Select?

Chairman **Abourezk**. When we say joint select committee, or to select committees, just say appropriate committees in each House.

Mr. **Taylor**. All right.

Chairman **Abourezk**. Is there objection to that kind of amendment?

Congressman **Young**. Reserving the right to object: We don't have really the appropriate committee. I don't know who it is going to go to?

Chairman **Abourezk**. But appropriate committees would be whatever Indian committee or subcommittee would be in existence. Right?

Congressman **Young**. All right.

Chairman **Abourezk**. Because, obviously, under the rules of both Houses, all Indian matters go to the Indian Affairs Committee or subcommittee with the exception of the Alaskan Native claims in the Senate and education in the House. Is that right?

Congressman **Young**. Yes.

Chairman **Abourezk**. So, I think if you said appropriate committees, that would be fine.

I would also like to recommend—amendment No. 2: "The committee should obtain special staff knowledgeable in Indian law, preferably Indian attorneys."

I don't think we need that. I think once you are referred to the appropriate committee, the Commision has lost control and you ought not to recommend exactly how the Congress do that.

Mr. **Taylor**. I would be prepared to delete that. The recommendation was rather forcefully stressed to Task Force No. 9 in our work because Indian people felt that Indian lawyers would have a greater insight into what was being done.

Chairman **Abourezk**. What we plan, under the Indian Affairs Committee in the Senate, is to hire Indian lawyers to do it.

Mr. **Taylor**. I realize that.

Chairman **Abourezk**. My guess is that we are going to be the only ones to be doing the drafting here. I don't think it will be done in the House because they have given the committee somewhat less authority over there.

So all I am saying is that it [illegible]sn't end anything and, instead, it might confuse matters.

Is there any objection to deleting that?

Commissioner **Whitecrow**. What is it?

Chairman **Abourezk.** No. 2.

Commissioner **Whitecrow.** Deleting it entirely?

Chairman **Abourezk.** Yes; on the grounds that the Congress is going to take care of that by itself.

First of all, the amendments to paragraph 1 are adopted without objection.

All right. Is there objection to deleting paragraph 2 altogether?

Commissioner **Deer.** Mr. Chairman, I would just like to see and emphasize that if we are going to delete it as a recommendation that I think it is important that we keep at least the statements on the need for Indian attorneys somewhere in this.

Chairman **Abourezk.** All right; that would be rather like report language.

Do you want to put it in the narrative?

Mr. **Taylor.** Fine.

Chairman **Abourezk.** Without objection, that amendment is adopted. Section 2 is deleted; the descriptive language and the text, itself, will be there.

No. 3 is fine with me.

Mr. **Taylor.** Mr. Chairman, just for the transcript, when we first started these proceedings, we didn't know that they were all going to be published.

So in view of the fact that we now have a rather informal record, I would simply like to point out that recommendation No. 3 does recommend that the process of recodification involves a substantial amount of consultation with Indian people.

Chairman **Abourezk.** Is there a motion to adopt this section?

Commissioner **Bruce.** I will make that motion.

Chairman **Abourezk.** There is a motion. Is there a second?

Commissioner **Deer.** I second.

Chairman **Abourezk.** All those in favor of adopting this section, raise their right hand.

The vote is 7 to 0.

What page is the next section on?

Mr. **Alexander.** According to the schedule, we are supposed to move to chapter 12, but I would like to ask that we——

Chairman **Abourezk.** What about section D? Are you skipping that?

Mr. **Alexander.** No; that is what I am coming to.

I would like to present and add section D at this time and discuss it briefly. And we will have a vote.

Chairman **Abourezk.** Do we have a copy of that?

Mr. **Hall.** Yes, sir; I just handed them out.

Mr. **Alexander.** Gil Hall will present that section.

Mr. **Hall.** Briefly, part D is appended to correct what we perceive as a shortcoming of the research and information sources available to Congress and to the public in Indian affairs.

The last two pages of part D, that I just handed out to you, contains recommendations which, in essence, directs the Library of Congress to establish the Native American Studies Division in the Library with a staff, with a collection of basic reference materials, with facilities and money for preparing a comprehensive bibliography and updating, periodically, the research information dealing with the Native Americans.

I discussed this a number of times with the Library of Congress and they agreed that there is a shortcoming in the facilities currently.

This is intended to say what we feel will improve the necessary sources available to Congress from the Library of Congress.

Chairman ABOUREZK. This is fine, as far as I am concerned, and we will have other comments.

The full recommendations you have, starting on the third page of this package you gave us, "We intend to put in the report the summary of findings and recommendations or the full recommendations at the beginning of this section."

Mr. ALEXANDER. There will be a chapter at the beginning of the report that will summarize the major findings and recommendations.

Chairman ABOUREZK. Is that how they will appear and do you have them here?

Mr. ALEXANDER. Something similar.

Chairman ABOUREZK. They don't jive.

Mr. HALL. Actually, what will probably appear in this summary will be a very brief statement of those four recommendations that are at the tail end of this.

Chairman ABOUREZK. You already have a summary of findings and recommendations which do not jive with the full recommendations you have.

Where you say, for example, "there should be a facility which is readily available" while, actually, you should say, "Congress should authorize the establishment of the Indian Collection Center and provide appropriate funds."

Mr. HALL. I think that is correct.

These recommendations were changed just this morning after a conference I had with the Library of Congress.

Chairman ABOUREZK. Can you make that particular change without changing the substance of it?

Mr. HALL. Yes, sir.

Chairman ABOUREZK. Make sure all your other recommendations read the same way.

Mr. HALL. Yes, sir.

Chairman ABOUREZK. All right.

Are there any questions on this section? Any comments; any amendments; is there a motion?

Commissioner DEER. I so move.

Chairman ABOUREZK. There has been a motion to adopt. Is there a second?

Commissioner DIAL. Second.

Chairman ABOUREZK. All those in favor of adopting this section raise their right hand.

The vote is 7 to nothing in favor of adopting. The next section?

Mr. ALEXANDER. We now move to the first section of chapter 12—the title of which we are going to change from "Special Problem Areas" to "Special Circumstances."

The first section concerns Alaska.

Chairman ABOUREZK. You are going to call it "Special Circumstances" instead?

Mr. ALEXANDER. Yes.

It was Commissioner Bruce's suggestion. The finding of the Alaska section—begin on page 17 and chapter 12.

Basically, I should say that this chapter does not track all of the many problems and special conditions in Alaska. It is a very narrow chapter.

It deals with two basic issues. One is the Alaska Native Claims Settlement Act, and some of the problems in the implementation of the act and some of the long-term implications of the act.

The second thing this chapter deals with is current funding problems under Public Law 93–638, the Indian Self-Determination Act as they apply it in the multigovernmental system of Alaska—where we have regional corporations, village corporations, Native villages' municipal corporations, regional tribal governments, and some others.

It is very unclear in that setting who the funding entity should be. In terms of the Alaska Native Claims Settlement Act, what we are saying is that the Department of the Interior has impeded the intention of Congress and the Claims Settlement Act and many of the Native corporations have not, in an efficient manner, received their land. The whole easement process has been an incredible stumbling block to the conveyance of interim title.

We make a number of specific recommendations on easements, one of which is that the easement provisionship be repealed.

I might mention that this recommendation comes initially from the State Director of the Joint Federal State Land Commission in Alaska that was established by the Alaska Native Claims Settlement Act. An interim recommendation barring the complete repeal of these from the provision would be that the interim Secretary of the Interior grant interim conveyance and that easements be negotiated after land conveyance. I think on easements: It is important to point out that there are, under existing law, a variety of mechanisms for obtaining necessary easements, but an easement in the Alaska situation has been an incredible controversial situation.

Commissioner Borbridge, would you like to add anything to the easement issue and how it impacts southeast Alaska or what-have-you?

Commissioner BORBRIDGE. Mr. Chairman, you pretty well covered the concerns that have been expressed by the Native corporations and the stockholders intended to be the beneficiaries of the passage of the Alaska Native Claims Settlement Act.

Certainly there is an impact on the nature and type of activities in which the corporation can engage in view of the fact that Alaska has the longest coastline of any State in the Union.

The question of shoreline easement becomes a particularly important consideration as the corporations plan for the type of development and other associated activity in which they can engage.

Mr. Chairman, in addition to the general comments on the easement matter, it is important for us to appreciate that with respect to Alaska, the Alaska Natives have also enjoyed the same unique and special relationship with the United States in the sense that the United States is the trustee, and the Alaska Natives are a part of the Native American Nation. The passage of the Claims Settlement Act was intended to resolve with finality the long-pending question of the aboriginal claims of the Alaska Natives.

The resolution of the claims itself resulted in some rather innovative steps that were taken both in the resolution of the matter and its implementation.

It is important to appreciate, however, that although there were innovative concepts that became a part of the administration of the Claims Settlement Act, in no way was this intended, nor has it actually ever had an adverse impact on or reduced or eroded the trust relationship existing between the Alaskan Natives and the Federal Government.

I think that basic point is a very important one to establish and one that I want to emphasize at this time.

Other than that, I think that you fairly well addressed yourself to the concerns that we Natives have felt.

Mr. ALEXANDER. There are several other specific recommendations. The Alaska Natives Claims Settlement Act provides a 20-year tax exemption on the 40 million acres that were to be conveyed.

Given the substantial delay in conveyance, that 20-year period may well run out before any massive conveyance has occurred.

The 20-year exemption had behind it the largest land corporations, a period of time to be able to be substantially become economically viable so that they would be in a condition to pay taxes. That may not be true.

We recommend as a specific amendment that that exemption, at a minimum, run from the conveyance of fees, simple title in Alaska, to the 40 million acres.

There is another recommendation on taxation, and this really concerns many of the subsistence villages, that all undeveloped lands remain tax exempt permanently in situations like Arctic Village or some of the other more remote villages in Alaska.

The land was selected on the basis of a subsistence economy and also on the basis of retaining an isolated status; and not on the basis of development.

Alaska currently does not have a land tax. There is no particular reason why it would not be given it down through the years, and that Alaska would adopt a land tax.

The villages, such as Arctic Village and others similarly situated, would be forced into the position of development, when that is not their desire, or into the sale of land.

Congressman YOUNG. Point of information. Arctic Village, I believe, opted out into the reservation.

A reservation, we can argue that later, is a separate unit. They voted to go into the land use reservation and had that option.

Mr. ALEXANDER. OK.

Congressman YOUNG. Mr. Chairman, I think the recommendation for the exemption of 20 years is good as the Interior Department has often made roadblocks. I have often said that one of the other recommendations of the Claims Settlement Act is that the Alaska Native communities take Interior Department to court and sue for legal fees that have been derived from the legal fighting.

I don't know if that is a viable solution or not.

Mr. ALEXANDER. We do, Congressman, on page 19 make a recommendation that the litigation against the Department of the Interior to enforce compliance with the Claims Settlement Act, where successful, attorney fees should be provided.

Congressman Young. As far as undeveloped lands: I think a reference to subsistence should be stricken and just refer to nondeveloped lands.

Subsistence is a very sticky issue in my State right now. I think John will agree with me. It is recognized, but if it is based upon an ethnic recommendation, we have some real problems outside their lands.

That raises another point, Mr. Chairman, if I may: We are quite aware that the deed to land issue in the Native Claims Act directly affects the Native land selection. I think there should be somewhere in this recommendation that the right of access to, from, and across Federal lands be a right and not be at the discretion of the Interior.

Also, along those lines, that their right to utilize those lands, not only for subsistence purposes, but for the taking of game—and I want to get away from that subsistence again—but the issue of obtaining fur is very crucial because most of the trapping is done in my State. Outside of the selective Native land there is a move afoot by the so-called Alaska Coalition to deprive them of that right to trap and they were denied this.

But if anyone can tell me where you can trap on the park lands I would like to see it. So, I would like to have somewhere in the recommendation that these things are clarified so there is no depriving of what has been their right for as long as it has been in existence. John might want to comment on that.

Commissioner Borbridge. Yes, Mr. Chairman, I would certainly agree with those recommendations. I think it is possible through the classification of the deed to lands which are adjacent to the Native lands, to have imposed on the Native activities standards which might not be anticipated.

EPA for example, which could have the result without the Natives knowing about it, of severely restricting the nature of the use of the lands, which Congress intended should be used as the Natives desired.

I would certainly agree with the recommendations of Congressman Young.

Congressman Young. One other point, if I may, Mr. Chairman.

I am just going through these now, and 5–B—Establishing and Reestablishing the Reservation Status—is there some reason for this?

Mr. Alexander. There are a number of long-term issues under the act involving the availability of stock certificates—eventual loss of control as a potential.

What we are saying is that down the road, in another 4 years, that acknowledging that the Alaska Native Claims Settlement Act was an experiment; that a clear, comprehensive look should be taken and all alternatives be considered.

We specifically mentioned that because that is in the alternatives that people are beginning to talk about in Alaska.

I know that it was rejected by many when the Alaska Native Claims Settlement Act was first being discussed, but that when the act be reevaluated, based on the 10-year experience, that all alternatives should be part of the consideration.

Congressman **Young**. I have no objections, I just want to make sure that we understand there is only one supposedly agency reservation in Alaska.

Mr. **Alexander**. That is correct.

Congressman **Young**. And the rest of them are land-use reservations and they were wishing to refer to that status—they have taken a great deal of pride in not being an agency reservation but a reservation for land use only.

Mr. **Alexander**. Our point is that the full range of alternatives should be the subject of that review and that that review not be restricted to any current conditions.

Commissioner **Borbridge**. As I perceive it, Mr. Chairman, the intention of the establishment of the special congressional commission would be to consider those items listed under 5–A and 5–B, that they might be considered, but such consideration would not necessarily be restricted to such items.

It might well be that we might not have solved the issues pertaining to section 7–I, the revenue-sharing provision. That might well be a matter for an oversight hearing.

Mr. **Alexander**. Absolutely.

Commissioner **Borbridge**. About the only other comment I have, Mr. Chairman, relates to item 6, Public Law 93–638. There have been mixed feelings in Alaska and especially southeast Alaska.

The central council, the one established tribal governing council in the State, has always considered itself the appropriate body for contracting with the Tlingit and Haidas.

Thus, I look at the recommendations in section 6 with some rather mixed feelings, because I feel it is important to reaffirm at all times the right of the tribal governing body to enter into contracts. That given that as a central theme, it may well be that other entities may also have an opportunity to contract, but that I would not agree with the designation of the subentities as tribes.

This would have the impact of creating a conflict which would be unfortunate.

Would you comment, please?

Mr. **Alexander**. On page 20 of D, "any recognized regional tribal government should be exclusively eligible for both self-determination grant funds and contracting."

Commissioner **Borbridge**. Thus, it is intended that in the absence of such, that these others that you have alluded to would then be determined to be eligible?

Mr. **Alexander**. Right.

Which gets us to C, also, because as we well know there is a multiplicity of organizations and it varies by region.

Where there had been nonprofit corporations of the social service nature established on the regional basis, and there are local tribal governments in the villages; and what we do is allow those social service entities to have a contract right, subject to preemption by the individual community.

That would not be applicable in the southeast, but it may be applicable in some of the Alaska regions.

Chairman **Abourezk**. John, as you know, we had several hearings in Alaska on this question and we never came to a resolution on it.

It was very confusing, and my question to you is: Does this settle it? I haven't read the narrative of it, but does this bring us settlement?

Mr. **Alexander**. Yes; it sets up a priority system.

Chairman **Abourezk**. Let me ask the Alaska representatives what they think of that?

Congressman **Young**. My problem is that "recognized regional tribal government"—who is going to judge what is recognizable? We have had this fight before. Are Alaska Natives or are we tribes individually, as recognized tribes in the Government?

The southeast doesn't have the problem, necessary; we do in the northwest.

John, do you have any comment on this?

Commissioner **Borbridge**. My comment would be, at least with respect to the one recognized tribal governing body, whose status would simply be affirmed.

Namely, the Central Council of Tlingit and Haida Indians of Alaska. I think that to the extent that there is a possibility of the regional groups being recognized either because of further work by the Commission and subsequent legislation by the Congress; and if they should be recognized as tribes, then perhaps that might be a preferable way to go, rather than to have a number of substitutes recognized as tribes, making it difficult, for example, to operate on a regional level.

As I understand it, this is what the intent is.

Congressman **Young**. I am still in the dark, Mr. Chairman, but we will discuss it.

Commissioner **Deer**. I am not as informed on this as I would like, but when I hear this word experiment, my antenna goes up, because this is what they did with us, the Menominees, and I guess you are all aware of the result of that experiment. I would like to ask what is envisioned after this 20-year limitation? What is going to happen to the land?

I am concerned about the long-term limitation on the Alaskan Natives involved in these issues.

Mr. **Alexander**. I would say the experience of the Menominee Enterprise, which was your corporate entity, as I remember it, which ended up being controlled functionally for a long time by a non-Indian interest, is a potential problem in Alaska. Once that stops, it becomes losable in a variety of mechanisms—voluntary and involuntary.

There is a real chance that those corporations and those assets which were designed for the Native peoples of Alaska will go out of Native hands.

There is a real fear that is being expressed in Alaska.

Congressman **Young**. This is a real danger. We had a discussion about this the other day, because even at the end of 20 years there is so little taxable land in the State the State can't tax its own. There is only 80,000 acres now of privately owned land in the whole State of 375 million acres. The rest is Federal Government land.

And yet, in those Native lands, the State itself could possibly be looking for a tax base. Under State law, we could pass a law that would tax the Indian lands; and in turn, through taxation, the Natives would lose control of the lands, because they won't be able to pay the taxes.

I don't think they object to paying the taxes when they are drilling oil or doing something else. I don't think we have to talk about this, but some people keep saying all this will never happen.

I just happened to think that behind every bush, there might be a rascal. I hope we can come up with a recommendation that will protect those lands, that will not take it away from them, and there is a real strong possibility there.

We can extend the 20-year deadline. Maybe we can work it out. I don't worry as much about stock as I do the lands.

Commissioner **Deer**. Well, I am worried about both here. Based on our experience.

Congressman **Young**. I think you will have a lot of Natives buying up Native stock, between you and I, but the land bothers me. A lot of people who are in Alaska today, who are not aware of any benefit of the Native Land Claims Settlement Act—the only thing they are going to have left is the land. That is all they will have left.

Mr. **Alexander**. On the stock certificates—I think there is a potential for involuntary loss—it is really significant.

Even if the corporations are as economically successful as people would wish them to be, the amount of money that would be paid in dividends will not be significant given the 7–1 provision.

The taxation, and so on, people may very well remain poor. What is the status of that stock and the State welfare proceedings? What is the stack on that stock in bad debt proceedings?

That stock could end up with a large portion being held by the State of Alaska. It could be one of the leaders in Alaska—the situation where "X" Oil Co., knowing there was a deposit within a particular Native corporation's area, where the Native corporation did not want to develop it along the lines that the oil company perhaps did, could, for a limited sum of money, go out along the Yukon River and purchase at $10,000 a shot, the rights to that corporation.

What do you need to control a corporation: 30 percent of the stock, 40 percent of the stock? There is substantial potential for problems here of total loss of the benefits of the land and economic benefits of the Native Claim Settlement Act down the road. Both on the land base and on the stock certificate.

Congressman **Young**. One thing, if I could comment again, I want the protection, but I also want them to have a decision in that protection.

I don't want to lock them into something that they may not really want and I think John will agree with that.

Commissioner **Borbridge**. Yes, Mr. Chairman, I would think that the intention of the Commission at this point would be to recognize that there is a problem and a danger, but not to make a hard recommendation; but rather to concede that perhaps by 1981 we would have a better perspective from which to evaluate what the dangers may well be. It may be by that time that the corporations and stockholders may be in a position to be prepared to make a hard decision that they would not be prepared to make right now.

I would like to comment, Mr. Chairman, with respect to the Alaska circumstances; because of some rather unique problems that need further clarification.

I would like to state for the record that I require the services of an attorney to assist with the Alaska section, not in a major effort, because I want to comment for the record that I have been very pleased with the work that staff has done in this area.

On the other hand, I feel that it is very important that I should have the opportunity to work with counsel. I have tentatively discussed this with Mr. Richmond Allen. who would be available.

He is a partner in the firm of Weissbrodt & Weissbrodt. I would like to arrange to engage his services in this limited area. There would also be an opportunity for Congressman Young to express some of the concerns that he expressed, Mr. Chairman.

Chairman **Abourezk**. What is the proposal?

Commissioner **Borbridge**. The proposal that I am making is that I would have the opportunity to have counsel working with me on refinement of the Alaska section; so that some of the particular concerns that I have expressed—for example—the necessity to differentiate or to distinguish between the Settlement Act and the provisions of the act pertaining to implementation and on the other hand the trust relationship of the Alaskan Natives which, while in some respects is not clearly defined by the Congress, nevertheless still remains as a trust relationship.

This matter is quite important, and I think that it is important that an adequate statement be entered into the record for purposes of defining or clarifying several of the areas. I would, therefore, propose that I be given the opportunity to have this special assistance.

Chairman **Abourezk**. You mean a special office that would require an additional funding?

Commissioner **Borbridge**. That is correct.

Chairman **Abourezk**. I don't know if we have any more money, John.

Commissioner **Borbridge**. The question I would then ask, is for a "yes" or a "no."

Chairman **Abourezk**. It is not up to me to say yes or no; it is up to the Commission itself.

All I am saying is that I don't believe we have any more money to hire outside attorneys.

Commissioner **Borbridge**. The reason I ask is because I feel that if $21,000 has been allocated for one attorney, perhaps $2,000 might be allocated for these purposes.

Commissioner **Bruce**. I have to agree.

Chairman **Abourezk**. The Commissioner can vote for an extra attorney, but I don't know where the Commission is going to get the money to do it.

Now we, as you know, put in for an additional authorization and appropriation, and if we get that—I don't know—I will have to ask Max Richtman. I will have to ask Max if we have money available for that. You are talking about $2,000?

Commissioner **Borbridge**. About, yes.

Chairman **Abourezk**. Did you hear the proposal, Max?

Mr. **Richtman**. No; I didn't. I am sorry.

Chairman **Abourezk**. The proposal is that Commissioner Borbridge be provided about $2,000 to retain an attorney to work on this Alaska section.

Do we have the money?

Mr. Richtman. We do.

Chairman Abourezk. All right.

Well, before we do that now, let's find out: Are there any other commissioners who want special counsel for any purpose?

Commissioner Bruce. Yes, I would, Mr. Chairman, on the urban situation. I don't think I need $2,000 but I do need some money.

Chairman Abourezk. How much do you need?

Commissioner Bruce. I would say $2,000 at the maximum. That is pretty far down from $21,000.

Chairman Abourezk. That is $4,000 now, Adolph?

Commissioner Dial. Well, I did my thing the last time and it was taken care of.

Chairman Abourezk. It has been taken care of?

Commissioner Dial. Yes, my fellow is here today, he will appear.

Chairman Abourezk. We already hired an attorney for you?

Commissioner Dial. Yes.

Chairman Abourezk. All right; that is $4,000.

Congressman Young?

Congressman Young. Point of information.

John, I hope we consult on whom we are going to hire.

Chairman Abourezk. You don't want your own attorney?

Congressman Young. No.

Chairman Abourezk. Do you have $4,000 Max, with which to hire a couple of special attorney's?

Mr. Richtman. Yes.

Chairman Abourezk. All right.

So now, the proposal is: Do you want to make it in the form of one motion for both of you?

Adolph?

Commissioner Dial. Mr. Chairman, I move that John Borbridge and Louis Bruce be given——

Chairman Abourezk. Not to exceed.

Commissioner Dial. Not to exceed $2,500 each——

Congressman Young. We got a raise.

Chairman Abourezk. I have to reconsult with our financial man now.

Do we have $5,000?

Commissioner Dial. All right, $2,000 each, to hire an attorney or consultant to work on their special problems.

Chairman Abourezk. We are all right for $4,000?

Mr. Richtman. Yes.

Chairman Abourezk. The motion has been made that not to exceed $2,000 each be allotted to Commissioners Borbridge and Bruce for the purpose of hiring outside consultants for the special problem areas that they are interested in—Alaska and urban affairs.

Is there a second?

Congressman Young. Seconded.

Chairman Abourezk. There is a second. All those in favor will raise their right hand.

The vote is 7 to 0. The motion is adopted.

Commissioner Bruce. Mr. Chairman, may I make a comment?

I think, in the record, we did discuss this last time and the chairman told us we all had equal rights to hire attorneys and so forth. Is that correct?

Commissioner DIAL. Yes; that is correct.

Commissioner BORBRIDGE. Yes; that is correct.

Commissioner BRUCE. But we have had a motion anyway.

We are coming into the urban chapter tomorrow morning. I am anticipating quite a lot, but I am very much concerned, as I am with the Alaska situation, because, as we went over this yesterday, in the briefing—I want to be sure, and I am sure John does, and the Congressman from Alaska—that all of these things are satisfactory. That there won't be any question later down the road about what we are recommending.

There are a lot of things that I can think about that are involved in that Alaska situation. The 638 situation has to be more definitely spelled out. You raised the question about the tribes. Who is going to define that point?

So I think this is good. We have a chance to review this, as I want to review the urban situation.

Congressman YOUNG. Mr. Chairman, if I could ask the staff, along those lines: Can you get into the reports of the act itself. I have read some of them and I haven't been able to determine if the intent of Congress, as a floor, as again may I restate the utilization of lands outside those lands which were granted to them under the act, is a very important issue.

I think there is some new wording in the report that would help clarify the situation, and would be of help to me if anybody asked me what it is.

Mr. ALEXANDER. The Alaska chapter, particularly what this chapter is, as I said in the outset, is very limited. I agree with Commissioner Borbridge. We discussed that there needed to be additional things said on the Alaska situation.

What we haven't discussed today is: We made various attempts, previously, to get certain people to act and we were unsuccessful. It is a significant problem for us, as a staff in Washington, to do anything on Alaska to this point.

As was mentioned earlier, many of us will be leaving the staff with this hearing, and there will be a much smaller mop up staff, if you will, afterwards and the provision of the special counsel to Commissioner Borbridge will have to take care of that.

I believe the staff will be able to help on that.

Congressman YOUNG. All right.

Commissioner BRUCE. Does this mean that we are not going to be able to vote on these recommendations?

Mr. ALEXANDER. That was the question that I was going to ask.

As I understood our discussion yesterday in the briefing, the issue was recommendations beyond those currently being made, such as those affecting trust status, such as those affecting the special delivery problems in Alaska of social services, health and education, and cost differential.

Congressman Young raises the issue of D-2 lands which we did not address. I am not entirely clear as to whether Commissioner Borbridge feels it appropriate to vote on the specific recommendations made on the claims settlement at this time or not.

Commissioner **Bruce.** Commissioner Borbridge, and Congressman Young, the question I ask is: Should we vote on any of the recommendations or should we delay it?

Congressman **Young.** Mr. Commissioner, this is what we are discussing right now. Just bear with us for a moment.

Commissioner **Bruce.** Is there anything else that should be brought up regarding the Alaska situation?

Commissioner **Deer.** Mr. Commissioner, I still want to, for the record, emphasize my concern about the stock and the land. I think that this issue should be addressed forthrightly. We have had enough experience with these experiments that we should be able to predict the outcome.

Mr. **Alexander.** We address the concern, however, we did not recommend specific things in this area. In our field visits to Alaska, and in our consultations with many of the people from Alaska, there has been, if you will, a preoccupation with all the issues surrounding implementation of the Claims Settlement Act. The easement question and the 7I provision and so on, and it is only recently that people are beginning to discuss the various longterm alternatives and solutions to the problem.

We were not able to identify either on a regional basis, or an Alaska basis, clear-cut solutions that Alaskan people were telling us. So that is why we went to the alternative of a full-funded, look-see at the situation with 10 years yet to run in the act. It would involve substantial Native participation.

If there had been a consensus, not even a consensus but a well debated system of alternatives, that had occurred in Alaska to this point, we would have been in a better position. We, individually, have our own perspectives upon an appropriate solution, but we were certainly not willing to impose our personal solution when the Native people of Alaska have not fully debated the issue yet.

There is a substantial preoccupation with day-to-day problems of fighting the Secretary of the Interior, and the gentlemen in the Bureau of Land Management, and I use that word slanderously.

Congressman **Young.** I think we have agreed on the extension, and that the rest of it we can get into later. I don't want to prejudice their position, but we have had correspondents and they are worried about the 20-year solution on those lands and they are not available.

We must make sure that they will not be taxed out of existence.

Chairman **Abourezk.** What will be the procedure for reworking this chapter? We will report back when?

Commissioner **Borbridge.** Mr. Chairman, with the assistance of our attorney Mr. Richmond Allen, I would propose to work with Mr. Young and his staff, and also some of our Commission staff, for purposes of clarification, refinement, and expansion, where appropriate.

Under those circumstances it might be appropriate then to introduce a motion to approve the sections subject to the proviso that they will be submitted and available for circulation, a draft of which we would work out jointly. This draft would be made available to Commissioners and to the staff.

I think this would be an appropriate motion.

Chairman **Abourezk**. May I ask a question? Is there another meeting set up for approval of any other chapters?

Mr. **Alexander**. March 4.

Chairman **Abourezk**. May I just suggest we not approve anything until it comes back?

Commissioner **Borbridge**. OK.

Chairman **Abourezk**. We will put that on the agenda for the March 4 meeting. Can you do it by then?

Commissioner **Borbridge**. Surely, that will be fine, Mr. Chairman.

Chairman **Abourezk**. And not take the action now, if that is all right.

Can I just make one suggestion? On page 18, under the recommendations that the form of that be changed, not the substance. What you say in the main body of paragraph 1 is repeated, it seems to me, in subparagraph A. I think subparagraph A is redundant.

Subparagraph B is as well.

Mr. **Alexander**. What we are addressing in A, maybe, should be in the text. But I think it is an important point that the executive branch occasionally hides behind the excuse that it doesn't have resources, and then doesn't take a second step of coming to Congress and saying, we have X job to do and we only have resources for 40 percent and it should be really laid out that that is not an acceptable procedure.

Chairman **Abourezk**. I think it should be laid out in the text, but there doesn't seem to be anyplace right here in the recommendation at all. But I think to expose the practice is fine.

Subparagraph B is redundant to the main text of paragraph 1. You are just saying it another way—that Congress ought to do it.

So, without objection, I will make an amendment to delete A and B and put it in the text, if you want to. Is there objection to that deletion? If not, A and B will be deleted.

All right, is that it on Alaska? Where is Jake? All right, we can go to Oklahoma now. Incidentally, let me announce that we will break for lunch at 12:30 and come back at 2 o'clock.

The reason for that is that the only way we can get this room is to provide that period of time open for somebody else at a meeting set up here, and we can't come back before 2 o'clock.

Commissioner **Borbridge**. So we should move all of our material?

Chairman **Abourezk**. I don't know where they are going to meet at. It is not a regular meeting, I think it is some kind of a constituent meeting.

Mr. **Alexander**. Maybe we can store the books in the backroom.

Chairman **Abourezk**. We ought to keep one member or two members of the staff here during the lunch hour and make whatever moves that are necessary after Senator Bumpers has arrived with his people. We may be able to leave everything here and take it off of those tables. I am not sure yet.

All right, what page is Oklahoma on?

Mr. **Hall**. 20A is where I would like to begin. We need to do some good housekeeping before we actually get into the discussion. Starting with page 20A we will strike that page.

The reason that that page is being stricken is because the findings have been added to and the recommendations have been changed altogether as of yesterday.

Chairman ABOUREZK. Do you have the changes?

Mr. HALL. Yes; they are being handed out right now. The changes begin at page 81 of this chapter. Pages 81, 82, 83, and 83A. But those three pages in your current chapter should be deleted, and the pages that you are being handed now should be put in their place.

Chairman ABOUREZK. You are deleting in the book pages 81, 82, 83, and 84; is that right?

Mr. HALL. No; we are deleting in the book pages 81, 82, and 83.

Chairman ABOUREZK. And replacing them with——

Mr. HALL. With 81, 82, and 83A which you have just been handed.

Chairman ABOUREZK. All right.

Mr. HALL. A brief overview of Oklahoma, to describe why it is being treated separately, would help to introduce some of the problems. Oklahoma was originally contemplated to be exclusively Indian territory. The aboriginal tribes who were in Oklahoma and a number of tribes from all directions of the United States were removed to that territory so that it would be exclusively theirs.

Oklahoma was originally not intended to be a State. Later on it did become a State, due mostly to the pressures of non-Indians moving into the State, and some views by the U.S. Government that they needed some controls in there because of the kinds of people, largely, who were going into Oklahoma.

They were not largely viewed as being the kind of folks that were most desirable. Oklahoma did become a State in 1906, and there were a number of acts which led up to that.

The acts which led up to Oklahoma becoming a State are numerous and they are confusing because they also were acts which affected the tribes which held the title to that State except for the northwest corner of a very small strip up there.

The confusion which exists now traces back to most of those acts. They also trace by territory. The eastern half of Oklahoma, by the tribes that are there now and who were all removed there, was largely occupied by the five civilized tribes.

The Congress, in the late 1800's, decided to and moved to abolish those tribes as governments. They never accomplished that intent completely, and those tribes have been left largely in limbo since 1906.

The northeastern corner of Oklahoma has a number of small tribes situated there which have varying status. Some of them have been terminated and some of them still have tribal status. Some of them have lands and some of them do not.

The tribes in western Oklahoma were treated still differently from those in the east and northeast. Their status is still that of being tribes and there is no question about that.

I might add also that there is no question that the Five Civilized Tribes are still tribes. They did not accomplish their intent.

So, the jurisdictional picture in Oklahoma is very varied. I might also add that the Osage, because of the situations that they had, have still a different status from the rest of the tribes in Oklahoma. That tribe is still considered on the land to be a reservation, which is confusing because there is no good reason to include the rest of the tribes on the also "reservations."

The result is a very confusing picture that flows from the laws passed to extend and to exercise jurisdiction within the Oklahoma Territory.

We have virtually in Oklahoma every possible kind of situation that you will find in the rest of the United States with the exception of Alaska. Such that it is difficult to sort out exactly what the situation of the State, Federal Government, and the tribes are today.

It is virtually impossible to have any one scheme of laws that is going to meet the needs of all the people concerned.

At the same time the Indian people of Oklahoma face the very same kinds of problems and frustrations and needs as Indian people in the rest of the United States. There is no difference between them and other Indians in those dimensions.

Likewise, they have been neglected to a large degree and in some cases more so than other Indians in the country.

For that reason we have made recommendations, beginning on page 82, which start out by saying—and this addresses one of the concerns uppermost in the minds of the people in Oklahoma, the Indian people there—that they have been treated differently.

There is no good reason that they know of, or that this staff can discern for them, having been treated differently. Therefore, our first recommendation contemplates that those findings and recommendations of this Commission, which are applicable generally to the Indians in the United States, shall also be applicable to the tribes of Oklahoma without distinction.

That, in and of itself, of course, will not solve the special circumstances that they face. We, therefore, have gone on to recommend a two-step process for restoring those tribes—at least restoring the potential for those tribes to regain the status they once enjoyed—which contemplates the continued existence of the State of Oklahoma.

We are not going to terminate Oklahoma. Contrary to some of the suggestions that we have received from the tribes. Therefore, recommendation No. 2, page 82, is that: Congress provide by legislation for the repeal of those laws which are inconsistent with those tribes enjoying the status identical to tribes across the United States in Public Law 83-280.

That does not, in and of itself, do anything other than remove the barriers of the jurisdictional propositions to those tribes. That recommendation would also provide that those jurisdictional powers presently exercised by the State of Oklahoma would continue on a concurrent basis, so that there would be no question as to whether or not a hiatus would be created for the purposes of doing particularly law and order services to the Indian people of Oklahoma.

The second part of that process is very similar to the process that we recommend for tribes who find themselves in the Public Law 280 States. It is, in effect, a retrocession kind of process. What it provides in principle is that the tribes on an individual basis, or an intertribal basis, because some of the tribes have been put into that situation, particularly in western Oklahoma, they may petition the Secretary of the Interior for the assumption or reassumption, if you will, of jurisdiction which they enjoyed prior to the establishment of the State.

Again, not inconsistent with the existence of a State. The procedure that is laid out in pages 82, 83, and 83A is nearly identical to that of the recommendations and the retrocession of Public Law 93-638. It provides for the provision of a plan which would be submitted to the Secretary, and then the Secretary will in turn implement the plan consistent with the law.

Commissioner WHITECROW. Mr. Chairman, I would like to comment on this particular recommendation. In our orientation yesterday we had quite a discussion in regard to this. I find that the recommendation, at that particular time, did pretty well delineate the Oklahoma Indians from the rest of the Indians in the Nation, and maintained this separate status as far as the nonreservation status is concerned.

The recommendations that we have here, I think, are most appropriate to our particular situation because we do have some tribes in the State of Oklahoma, due to their size, who would not be able to assign full jurisdiction operations over their treaty boundary area.

Also we have some tribes that desire to work toward assumption of these full jurisdictional powers.

We also wanted to be absolutely certain that the tribes of Oklahoma are governing tribes. If we are fully intending to work toward self-sufficiency of the tribes, then we must provide that avenue for the Oklahoma tribal government to assume its rightful place along the same, or with the same, status as other tribal governing bodies whoever they may be.

I believe these recommendations allow this to take place. As it is written here: We have had comments from many tribal leaders in the State of Oklahoma that have indicated that they would be most happy with concurrent jurisdiction with the State government, and I believe these recommendations do that.

Is that not correct, Don?

Mr. WHARTON. Yes; they do. They also provide for a process by which, under a tribal plan approved by the Secretary in consultation with the State, a tribe could assume exclusive jurisdiction.

Commissioner WHITECROW. This is in line with those comments that we have received from the various tribes indicating their desires to assume those jurisdictional powers. It does not impose that requirement upon those tribes who would not be capable of assuming those responsibilities at the present time.

This process does allow a phase-in or a step-by-step process of tribes assuming those responsibilities. We have got a strange situation in the State of Oklahoma in the fact that the past 70 years the assimilation process within the State has certainly been working its direction in fulfilling its total goal insofar as removing tribal Indians from tribal status.

We have a great number of people in the State of Oklahoma who are of Indian descendancy and are members or citizens of their tribes, and who have not really had much dealings with their tribal government other than to receive those Federal services with which they are currently eligible.

This will, in effect, bring a reestablishment or a rejuvination of those individuals back to the tribe, and I believe it allows that type of process to evolve. So I would recommend, and I heartily concur with, this entire report for the State of Oklahoma.

Chairman **Abourezk**. Comments or questions?

May I make one suggestion insofar as style is concerned. Recommendation No. 1, rather than say: "should be the consensus of the American Indian Policy Review Commission," wouldn't it be better to say that "the American Indian Policy Review Commission finds that." Does anyone argue with that particular language? I just think it cleans it out better.

Is that all right, Don?

Mr. **Wharton**. Perfectly, Mr. Chairman.

Commissioner **Whitecrow**. Say it again.

Chairman **Abourezk**. That sentence, recommendation No. 1, should be that: "The American Indian Policy Review Commission finds that the findings and recommendations applicable to Indians generally" and so forth. It is just more a matter of style than substance.

Without objection that amendment will be adopted.

Is there a motion.

Commissioner **Deer**. Mr. Chairman, I so move.

Commissioner **Borbridge**. I second.

Chairman **Abourezk**. Those in favor raise their hand.

The vote is 7 to 0 in favor of adopting. The amendment is adopted.

Next section.

Mr. **Alexander**. The next section concerns the California Indians. This section does not make any particular——

Chairman **Abourezk**. What page are you on?

Mr. **Alexander**. Page 84. I would like to briefly explain why this chapter is here, and where the recommendations are really found.

California encompasses a number of, probably, mostly the problems that exist in Indian country generally, and several unique ones. Public Law 83-280, the problems of funding smaller tribes.

Three-quarters of the State's Indian population is found in urban areas and so on. This chapter is necessary information because most of the recommendations that are made in the report have pertinence to California.

The special one that we point out here is that the Bureau of Indian Affairs allocates resources to California based on the 6,000 reservation count when, in fact, the service population on a year in the Indian reservation in California is approximately 40,000 persons.

Based on the recommendations that were made in the Federal administration and budget section that allocation process would be straightened out and Public Law 83-280 is addressed in the private government chapter, and so on.

But we did want to pool together for informational purposes some of the unique problems in California. The recommendations would simply be referrals to other sections of the report.

Chairman **Abourezk**. All right, is there a motion to adopt this section?

Commissioner **Bruce**. I so move.

Chairman **Abourezk**. Is there a second?

Commissioner **Dial**. Second.

Chairman **Abourezk**. All those in favor of adopting will raise their right hand.

All right, six in favor and none against.

The next section, chapter 11, nonrecognized tribes.

Mr. **Alexander**. With us on this section is Dexter Brooks, an attorney from North Carolina, and our other staff person is Chuck Downs, who is on our staff. Dexter, do you want to make a comment?

Mr. **Brooks**. My name is Dexter Brooks. I am an attorney practicing in the town of Pimbrook, which is predominantly Lumbee Indian. I was asked to appear by Prof. Adolph Dial, who is a member of your Commission.

Our primary concern, or my primary concern, with the work of the Commission is in the area of what might be termed the nonfederally recognized. It is our hope that your recommendations, and the recommendations by Congress, will make that term obsolete. That after the enactment of the recommendations there will only be one kind of Indian in the country and that would be federally recognized.

There is a little illustration to my point. I would like to relate to you an incident which happened to me some 5 years ago. In the summer of 1971 I was in Senator Abourezk's home State, on Pine Ridge Reservation, and I was involved in an automobile accident when another car came across the center line. I suffered extensive injuries and I was taken to the Pine Ridge Hospital.

A nurse on duty asked me if I was Indian and she was white, and in a semiconscious state I talked to myself and I said, "Well, I attended an all-Indian school until I went away to college. I was a member of a group that developed the first Indian college in the country." So, quite naturally, I said I was Indian.

Due to the extensive nature of my injury, especially to the facial bone structure, I was flown to Omaha, Nebr., and coming in on a plane from Pine Ridge I was immediately ushered into the facilities.

About 3 days later a very nervous hospital administrator came to see me and asked if I had Blue Cross. Then I finally began to realize what the nurse had really meant when she asked me was I Indian.

I think more precisely she meant to ask me was I an Indian who was on the nonpublic health care benefits. And at that time, of course, I would have had to have answered no.

This, to me, is the primary consideration of a lot of eastern Indians because a lot of people, especially like the nurse, tend to confuse the terms. I think we have to come down with a definition and agree upon, once and for all, what is an Indian.

I believe that in working with the Commission staff here on these recommendations, which we wholeheartedly support, that this problem once and for all will be resolved.

A lot of eastern Indian groups, unlike the Lumbees, do not have a specific act. Congress recognized them to be a group of Indians and with that I will open myself to questions.

Chairman **Abourezk**. Any questions?

Commissioner **Dial**. Mr. Brooks, the Indians in your definition, what are they?

Mr. **Brooks**. In line with the Commission's proposed chapter 11. An Indian would be a person who is a member of a group, meaning for definitional factors the ones outlined, that would be a legal definition.

Of course, we could talk about culturally and racially what constitutes an Indian, but here we are speaking of a legal definition.

Commissioner **Dial.** Mr. Alexander, what do you view as a tribe?

Mr. **Alexander.** We have defined in the criteria what a tribe is. What we are talking about in terms of a tribe is a political entity that has a political relationship with the Federal Government. I think it is important, in the context of this chapter, to have some substantial explanation as to how some Indian tribes became forgotten or unrecognized.

There seems to be a feeling on some people's part that that occurred because of certain legal factors, or other factors. I think the review of the history of what happened, clearly laying that to rest, that it wasn't a distinction based on law but a distinction based on historical accidents and, in some cases, on the abuse of administrative discretion by Federal officials.

To answer your question specifically, on page 1 of this chapter, the last paragraph going on to page 2, gives our definitions, for purposes of this chapter, what the term "tribe" means.

The term "tribe" as it is used in this chapter will apply to all Indian peoples, including Indian communities, bands, clans, societies, alliances, and groups that meet any one of the criteria listed at the end of the chapter.

I would like for record purposes to have Chuck Downs—some of you may not know, but Chuck has been doing a significant amount of historical research over the past several years on eastern Indians, particularly the Tunica Indians in Louisiana, to explain some of the circumstances that resulted in some Indian people being forgotten.

Commissioner **Dial.** Before you move on, one other question. How varied could this political relationship be that you speak of? You speak of a political relationship—I can see a political relationship existing in various ways.

How do you see a political relationship with the U.S. Government?

Mr. **Alexander.** The recommendations are really a three-faced set of recommendations. The last phase answers that question. I guess I should lay out the three phases.

First is a declaration of policy by Congress in favor of recognizing all Indian peoples. The second is an administrative procedure based on those criteria to implement that congressional declaration. The third is a negotiation form between the agent of the trust and the individual Indian group to negotiate out the specific components of that political relationship.

I think the circumstances of the different groups, and we have identified probably 130 groups with a population of approximately 100,000 persons, very considerably.

Some have communal lands bases, some do not. Some are very small, some are as large as the Lumbee. Well, there is only one group as large as the Lumbee group in a concentrated population area, and I think there should be flexibility.

It should be a decision made by the local Indian tribe community as to what components of the relationship they wish to establish.

Chuck.

Mr. **Downs.** Perhaps we can approach this chapter from a general standpoint and just discuss for a moment the directions this chapter is going and where it comes from.

The Commission has found, in almost every case, the question of whether or not a tribe is recognized depends on certain historical acts or accidents. There is no reason why approximately 129 Indian tribes across this country have not had a formal relationship with the U.S. Government.

In many cases it is because they were in isolated areas, or because they purposely hid in isolated areas, or because administrative officials paid no attention to the tribes, and a number of other things which are outlined in the central section of this chapter.

So the Commission had to develop some kind of solution to solve the problem of the accidental nature of this issue. A second aspect of the issue is that historical accidents have been compounded by administrative indecision and by a lack of any firm basis for the administrative decisions on this issue.

Mr. Alexander. One thing that is not generally known, and should be pointed out, is that we oftentimes talk about treaties as a basis. We will amend this chapter to include a detailed chart, tribe by tribe, State by State, by population count, land base, and treaty status.

There are approximately 25 colonial treaties——

Mr. Downs. We tabulate 29 communities, under these 129, who know that they have U.S. treaty rights. There are 37 communities that have formal treaty relationships with governmental powers predating the United States with France or Spain.

Mr. Alexander. The United States, in most circumstances, adopted in the treaties with France for the Louisiana Purchase, and so forth. So to simply say, as many people understand, it is an absence of treaty rights which excludes these people, is just not factually accurate.

Chairman Abourezk. How many tribes are nonrecognized tribes existing in the United States today?

Mr. Alexander. Our count is approximately 129.

Chairman Abourezk. And how many people?

Mr. Alexander. In excess of 100,000, but we would not think that figure would go much beyond 150,000 to 175,000. The census counts are terrible in this area.

Chairman Abourezk. Any other questions?

Any other comments?

Commissioner Bruce. On that treaty thing, Paul, are you saying that a tribe can be recognized without being a treaty tribe?

Mr. Alexander. I certainly am saying that they can be recognized. All I wanted to do was have the public record lay to rest the notion that the eastern Indians did not have treaties.

A substantial number of them do. I think there is one further element in the procedure, to the point of talking about, that should be pointed out, when that package, that Dr. Dial and I spoke about—the trust relationship with each individual Indian community—would be submitted to Congress with a specific request for whatever additional appropriations are necessary to fulfill those responsibilities.

It would be a case-by-case situation, simply because the cases are unique and different. The populations are different and the land uses are different.

Commissioner Dial. Mr. Chairman.

Chairman Abourezk. Yes, sir

Commissioner DIAL. Mr. Chairman, I would like to commend Mr. Alexander and Mr. Downs and all others who participated in the work on chapter 11—on nonfederally recognized tribes.

I think they did an excellent job, and I hope that the Congress in later months will be able to study and think as well as these people did.

Chairman ABOUREZK. All right.

Are there any other comments or questions on this section?

If not I will entertain a motion to adopt this section.

Commissioner DIAL. Mr. Chairman, I move that we adopt section 11.

Chairman ABOUREZK. Is there a second?

Commissioner WHITECROW. I second it.

Chairman ABOUREZK. All those in favor raise their right hand.

The vote is 7 to nothing in favor of adopting. The section is adopted.

Chapter 10—terminated Indians.

Mr. ALEXANDER. Charles Wilkinson and I will present that chapter. I might point out, because it is not entirely clear in the chapter that the recommendation for an administrative procedure was drafted by Charles Wilkinson for task force No. 10, and I would like Charles to explain what that procedure is and any ground that he thinks is necessary.

Mr. WILKINSON. This Commission well knows that the furthest extension in Federal Indian assimilation of policies occurred in the 1950's, where the Government, in effect, went all the way with assimilation and terminated several tribes, including some large tribes with very substantial assets.

The findings of task force No. 10, and the findings of Congress during the passage of the Menominee Restoration Act, is that termination has been a failure, and that is the aim of chapter 10, to recognize that failure.

Mr. ALEXANDER. Charles, may I interrupt.

I think there is a fundamental thing that has to be addressed in that failure.

Many people will say that termination was a failure factually and they say it was a failure because Indian peoples oftentimes became financial wards of the State and municipal governments.

But termination is a failure beyond that. The factual matter is it might be almost less important than conceptual failure.

Termination, as a philosophy, is flawed because it denies the political existence and the permanent obligations of the United States.

Although the factual and personal experiences of people who have suffered through termination are appropriate considerations, I would not want to lose sight of the fact that it was a conceptual failure, regardless of what could have happened.

Mr. WILKINSON. I think that is an important point. I know several people on this Commission were present. Congressman Young will remember in September of 1973 in the House when the Menominee bill was passed, and that Congressman and many others spoke out against termination in general, because it was wrong.

And on September 23, in this very room, Senator Abourezk began hearings on the Menominee bill by stating that termination itself is a failure; that it was wrong; and that Indians have not participated in that process.

He was followed by Senator Jackson, Senator Kennedy, both Senators from Wisconsin, and several others. I think my colleague is correct that the record shows that termination is a failure. Not because the tribes were not equipped to handle it, but because it was wrong.

Chairman **Abourezk**. May I make one suggestion? On page 2, where it says, "Congress should officially state that termination is no longer the policy of the United States" by reviewing in the House and having a concurrent resolution in some way—I believe under the rules of the Congress, both the Senate and the House—you can't repeal a concurrent resolution.

Mr. **Alexander**. The word should be "repudiate."

Chairman **Abourezk**. I think that is correct.

I think it might be better to say that Congress should repudiate the policy of termination by appropriate resolution.

Mr. **Wilkinson**. I think the Senator raised a very important point.

Concurrent resolutions, of course, do not bind Congress beyond that particular Congress; but American Indians are not aware of that, as far as House Concurrent Resolution 108 is concerned.

My own impression is that it was an oversight of those of us who were involved in the Menominee process, not to have a statement at that time; repudiating House Concurrent Resolution 108. I think it probably should have been in that bill. I think that this proposal that is in the staff report is terribly important to American Indians.

Chairman **Abourezk**. Which proposal?

Mr. **Wilkinson**. The proposal you were speaking of—to repudiate House Concurrent Resolution 108.

Chairman **Abourezk**. Chuck, what is wrong with the Restoration Act that you are talking about in this second recommendation?

Having in its preamble a repudiation?

Mr. **Wilkinson**. That is already in there, Senator.

I drafted that act at the request of the Commission, and the first section is a statement of policy, as you suggest, repudiating House Concurrent Resolution 108.

Chairman **Abourezk**. Will that do it for you, then?

Mr. **Wilkinson**. Yes.

Chairman **Abourezk**. OK. I think we just ought to delete that first section and put in: "Congress should pass the Restoration Act, both repudiating termination and authorizing procedures whereby," et cetera.

Mr. **Alexander**. I would like to actually separate them because they are two legislative processes.

Chairman **Abourezk**. All right.

Mr. **Alexander**. The recommendation is spelled out more specifically on page 13, using the word "repudiate."

Chairman **Abourezk**. All right. Then you will change this recommendation.

Is there objection to that kind of an amendment? If not, then the amendment is adopted. Are there any other questions or comments on this section?

Mr. **Wilkinson**. These recommendations are at page 13 of chapter 10.

Commissioner **Deer**. Mr. Chairman, I just wanted to comment on the excellent presentations of the issues and the essence of the termination.

It was excellent.

Chairman **Abourezk**. OK.

Is there a motion, Ada?

Commissioner **Deer**. I move for its adoption.

Chairman **Abourezk**. Is there a second?

Commissioner **Whitecrow**. I second.

Chairman **Abourezk**. There is a second.

All those in favor will raise their right hand. The vote is seven to nothing in favor of adopting this section. The section is adopted.

Chapter 9, Off-Reservation Indians. I want to take notice that this is a very efficient commission. We have gone into the second day. After dallying for 2 years.

Commissioner **Dial**. It is about time.

Chairman **Abourezk**. We finally got on track.

What page are the full recommendations on, on this section?

Mr. **Alexander**. Page 31.

Commissioner **Bruce**. Mr. Chairman, I would just like to mention before we start on this chapter, that we had a lengthy discussion yesterday in our briefing section on a lot of the issues and recommendations.

I think we ought to discuss this now, but here again, if we can come up with some further changes, and recommendations, shouldn't that go over to March 4?

Chairman **Abourezk**. Are you still working on additional recommendations?

Commissioner **Bruce**. Yes.

Chairman **Abourezk**. If you want to do this, we will save this section to March 4, too.

I think we can do it.

Commissioner **Whitecrow**. Mr. Chairman, there is a portion of this I would like to throw out for discussion now and perhaps staff could take into account some of these concerns.

In the off-reservation atmosphere around the Nation the thing that concerns me, and I expressed my concerns yesterday in our orientation, is the fact that we have a situation here that I believe, if I were a Congressman of the United States, or a Senator of the United States, I would be concerned with the actual delivery and the cost of the delivery of these services to Indians, wherever they may be.

I believe that in our last meeting that I notified the Commission that I would draft a process which I felt would be appropriate for the delivery of health services and educational benefits, plus credit and finance opportunities for Indians, when they were away from their home area, or their reservation area.

When you take a look at this entire budgetary process of providing moneys to "fill obligations by the Federal Government to the beneficiary trust of the Indians," I would like to read into the record here a process which I feel could be considered.

The fulfillment and delivery of treaty and other legal obligations to the individual Indians has been a matter of concern to me for many years.

The Indian Self-Determination and Education Assistance Act appears to offer a change in the former delivery system.

However, this particular act has not been too effective up to this particular date.

The recommendation of establishing a separate Department of Indian Affairs appears to be the most appropriate method to allow the administration of tribal affairs to be conducted on a local level, by placing more emphasis on tribal governments.

They can put into the analysis and preparation that all services required by individual and tribal needs could be fulfilled. The individual Indian citizen of the tribe must be aware that without tribal government there is no government-to-government relationship; and without this relationship the Indians have no unique status within the United States.

Therefore, the fulfillment of obligations should filter through the Federal administration and the tribal government to the individual Indian. Particularly, the delivery of health, education, credit, and finance. How then should these specific services be provided?

Let's take the issue of health only. Services to improve the health of tribal citizens is a responsibility of their own tribal government which needs to control the necessary contract health care money for members of their tribes when they are away from their home or their reservation area; or away from the facility of their health service unit.

This would not detract from current service unit aids for specialized services. This would allow tribal citizens to receive comprehensive health care wherever they may be.

The individual tribe, or its government, could purchase an insurance policy as an example to provide coverage for their individual tribal members when they are away from their own home service unit area of responsibility. The tribal governments could also retain some funds from this contract health care line item to provide for third-party reimbursement to those urban Indian health care clinics that are around the Nation.

This would help finance those particular facilities, and free additional job positions within each tribal government, and this would allow utilization of Public Law 93-638 and assure that only tribal citizens who are eligible actually received services.

This same type of process could be utilized in the delivery of educational benefits, from either a vocational or an academic form of education; by tying the individual Indian citizen to his tribal government.

As I see the historical problem in Indian affairs is the fact that Indian individual citizens have a tendency to pull away from tribal government, and as such, this weakens the tribal government itself; thereby allowing the Federal structure, as it is currently designed, to deliver services to the individual Indian.

Whereby, we are really in effect, truly looking at self-sustaining or self-sufficient tribal governments, then individual Indian citizens should maintain close relationships and close ties to that tribal government and have a total voice within the electorial process of that government; thereby allowing the individual Indian to have very little recourse in the whole Federal structure.

The urban Indian, as an example, could maintain by correspondence, close ties with his tribe, and could receive from his tribe an identification card or a citizenship card that would perfectly identify him as a citizen of that particular tribe; and then Federal agencies could utilize this as an identification authorizing the delivery of services in various areas.

Of course, this is a very complex situation, a very complex problem, and I tried to approach this from the standpoint of an individual Indian out here, a member of the tribe, looking for perpetuity of comprehensive health care delivery to me as a tribal citizen wherever I may be—and also, from the standpoint of receiving educational benefits which are treaty obligations.

Then, I would want to go through my tribe and have my tribe, its government, its office staff, provide those particular facilities for me.

I feel, personally—this is a very personal opinion—that if we are really looking at making the tribal government self-sustaining, we must provide this. This whole process in some manner, in which the individual Indian must receive tribal blessings in order to receive services.

I don't feel that we are going to accomplish much unless we do bring back this individual citizen Indian relationship with his tribe.

I would like to ask Mr. Stevens for some comments on this, as we discussed this yesterday; and this will place this then in the official record.

Mr. **Stevens**. Commissioner, I would like to place into the record, as a staff recommendation, on how we deal with the comments that you just made.

One of the recommendations that we presently have drafted recommends that the urban Indian centers be utilized as a prime contractor for services for urban people.

The question comes up, when you discuss services coming through a tribe to an individual, as to whether or not that is inconsistent with that kind of recommendation. I think it is partially, and I would like to explain. I was an urban center director and what I think needs to be done is, first of all, that by March 4 we ought to at least make a rough estimate of what specific programs ought to be supplied and what specific kind of delivery setup.

In other words, in the new health act, will that be through the tribe or through the urban centers and so on. I think that in order to understand how programs might be delivered, and I am in support of what you are saying, there are some programs that members of federally recognized tribes who live in off-reservation areas would prefer to receive through their own tribe. I think a detailed analysis of each program would have to be undertaken to decide which ones those were.

In order to explain why the recommendation was to contract with urban centers, I think they are substantially, at least for the most part, talking about a different category of services, and those are services that are ordinarily handled through contractors or Federal administrators. I will give you a specific example. There are funds in most cases that are usually given to tribes—the employment assistance and the adult education training program in the Bureau of Indian Affairs, for instance—some of the functions they perform in their office, in the various urban centers around the country are performed to provide orientation, referral, housing placement and so on; and to handle certain kinds of emergency situations.

Those are usually handled by Federal employees. One of the things the staff is saying is that in that particular type of case, urban centers should deliver those types of services, rather than the civil service employees or government employees, partially because that is their function anyway. As an Indian center director, it was always a real hassle to me that we couldn't maintain a budget and yet the Bureau of Indian Affairs is funded to do the very same thing, and was kind of doing it in kind of an incomplete type of manner.

The other things like health, I think that we could develop an alternative kind of proposal and develop a text and their recommendation as an alternative to say, for instance, next week, whether or not that would be a viable type of alternative.

I think what really needs to be done is that there must be an estimate of some type, even if it is rough about numbers, about the number of off-reservation people and where they are located and what programs are properly applied in their case; and how they might be handled, whether through tribes and all.

I think the answer to the urban situation in terms of delivery services is a very complicated answer. I don't think it can be answered that urban centers should handle it all or the Bureau should handle it all or the tribe should handle it all. I think it has to be broken down.

Federal administration through the bureaus isn't the only thing. There are several problems that are handled by Federal agencies: States, counties and even private organizations, consultants, and contractors.

What we are saying is that it should be a policy to provide or to contract those types of services to urban centers, but we could examine the individual programs to see which programs should be delivered.

Chairman ABOUREZK. We aren't going to take any action on this particular section until Louis comes back with his lawyer and recommendations: Is that correct?

Commissioner BRUCE. Yes.

Chairman ABOUREZK. Then I just want to excuse myself for the remaining 10 minutes.

I will ask that Commissioner Ada Deer adjourn the meeting at 12:30 and we will be back at 2 p.m.

Commissioner BRUCE. Madam Chairman, I want to ask Jake a couple of questions, because we had a lot of discussion about this and your idea about the card. Are you saying that if you use that system, as a process, that the tribe issues the card, and determines what Indians will receive that card?

Commissioner WHITECROW. I think, Commissioner Bruce, if we are really talking about supporting the Indian Federal relationships, the only difference that I see between an Indian citizen of the United States is the unique relationship that the Indian has through his tribal government. That if there was no relationship then that individual Indian would not be treated any differently than any other citizen of the United States.

Therefore, if an individual Indian citizen, as a beneficiary of a trust, is to receive any benefits, those benefits should come through the tribe. We have already determined in our whole process here that the individual tribe will determine who an Indian is. As a result of that individual tribal constitution or other method of determination and recognition of an Indian——

Commissioner **Bruce**. But are you, Jake, eliminating a lot of Indian people in the community?

Commissioner **Whitecrow**. No; I don't think so. This would require those individual Indians, then, to establish their relationships with their tribes. As you know, we have an awful lot of tribal people today who say that once the Indian leaves the reservation he is no longer an Indian.

This does not cut him off as an Indian just because he leaves. He does not cut himself off. However, we do have some tribal constitutions that say if you are not born on that specific reservation you are no longer a member of the tribe. Well, this is that individual tribes' prerogative. If an individual Indian is an Indian, he should be a member of a tribe; otherwise, how can he become an Indian?

That doesn't answer your question——

Commissioner **Bruce**. No; because what I think we are saying here is what percentage of the 400,000 or 500,000 we are talking about of urban Indians who maybe can't qualify—maybe we are accepting Commissioner Dial's definition.

Commissioner **Dial**. No. Mr. Bruce it seems to me that any Indian in Chicago or any other city would be able to identify with some tribe. If he says he is an Indian he is going to be able to identify with his people somewhere, and if he can't then he is someone lost, and, then he has to find himself in a different world, other than the Indian world.

Would you go along with that?

Commissioner **Bruce**. Where is the other world?

Commissioner **Dial**. Pardon?

Commissioner **Bruce**. Where does he find services?

Commissioner **Dial**. I don't believe the people exist that you are speaking about.

Mr. Stevens, all Indians of urban communities; can't they relate to some Indian community somewhere?

Mr. **Stevens**. Almost without exception.

Commissioner **Dial**. So that is not really a problem, is it?

Mr. **Stevens**. Not really. I would like to explain, sir.

Let's talk about people who are from the nonfederally recognized tribes. If what Commissioner Dial has proposed was done, and if the rest of the recommendations and the report were adopted—and hopefully, there will be some followthrough—there will be a designator of some type providing that Indians would be set apart, like in an urban community. What happens in that urban community is that the Indian people do not form in most cases, neighborhoods or get-togethers, or whatever you want to call them, for a lot of different reasons.

Other minorities are able to get things like neighborhood facilities and other kinds of programs, because they live in a certain area.

So, the Indians in urban areas suffer from reverse discrimination and they have to be protected from that. I think this can be done administratively, as a matter of policy. There are chances to build urban centers from the neighborhood facility program. The thing that was raised was discrimination in Los Angeles, and all the Indians had to do was promise not to discriminate, and they don't, nor does any other group that just happens to be a community center; that is, primarily an Indian-oriented one. As a matter of fact, we serve people off the street without regard to race and this didn't happen frequently because other people didn't come to the Indian center much, but when they did, we served them.

We did not have a problem. Most of these services that are required by people are on a day-to-day basis in the urban center. There is busfare to get somewhere; or calling back to the reservation to get a piece of paper that they need to get into a program. It is checking on their lease payment. It is tiding them over until Monday, until they can get into the relocation or some other kind of a county program. It is feeding them before they can get into welfare services through the county. Most of these services rendered, at least up until recently, have been in that order.

Now they are beginning to get feeder programs and other types of things. What I am saying is that the pricing and special services that an Indian center conducts need not be restricted, and I think that the other people can be provided for.

What has to be provided for either by legislation or by some kind of policy judgment is that the Indian people have to be allowed to be a separate group.

There is one other thing I would like to really try to impress on people, and if it is not specifically in this text, we ought to underline it——

Commissioner WHITECROW. Excuse me, Ernie, let me just inject one thought here. I concur wholeheartedly with the fact that Indian people are separate and they should be allowed to be separate because of this unique situation; but the only reason that they are allowed to be separate is not because they are an Indian; but it is because of their membership in a tribe, band, clan, town, or village—whatever it may be.

That is the only reason, and if they are not a member of one of those tribes in a recognized status, then we have just provided for a procedure whereby the nonrecognized Indians can become recognized as tribes, bands, clans, towns, villages, or what-have-you, then every Indian in the United States will have a relationship with a tribe.

If we look at the budgetary process provided in the Bureau of Indian Affairs—management review—that requires the total budget preparation to be done at the tribal governing body level and that particular agency superintendent has the responsibility then of developing the total budgetary requirements for that specific tribe, and that tribal government must develop its own demographic and socioeconomic system and give a reflective picture of this wherever their citizens may be.

They are then responsible for the delivery of services to their tribal members, wherever. So, they should recognize those tribal members, and if they are really interested in Indians they are definitely going to change their constitution or bylaws and provide those services to their people. Otherwise, that specific elective tribal governing body should be removed. So I don't think we are cutting anyone out at all.

In this process, if they would come back, we would be requiring them to reestablish their relationship with their tribe.

Commissioner **Bruce**. I have no real problem with that, except that I think there are some who were left out. You see there were very few in the urban community. Employment assistance in the BIA was charged with the responsibility to do exactly what you are talking about.

Where did they slip up as far as the urban centers are concerned? There is a budget for that too, Jake, but there is very little contact between the BIA office, the Employment Assistance Office and the Indian centers; isn't that true?

Mr. **Stevens**. Yes. That has improved somewhat, at least it had around 1970 in Los Angeles and other parts of the country. I think that the heads of the employment assistance offices saw that they were running some things in parallel with the underfunded Indian control organization or organizations.

I think they saw that. We had a very difficult time with the possible exception of people like Al Trimble and other people who were a little more expensive, and this is where they are very restrictive. They are even restrictive within the context of whether you are a member of a federally recognized tribe.

This is leading to a point that I was going to bring up. You get into a ridiculous situation, and we brought this up before, I don't think the American public or Congress fully realizes that being turned down in Los Angeles for employment assistance or training because you were an off-reservation Indian; jumping on a train or a boxcar, going home on that train, and hitchhiking, getting back to—in this case, I suppose Oneida, Wis.--identifying for employment assistance and receiving it and then being relocated to Los Angeles.

This is standard practice and has been for some time. It is kind of consistent with what Jake is saying. What needs to be done in those types of situations where people can't get the services and services within the community that they live: An Indian person, wherever he is, should be allowed to get in line with the rest of his own tribal members and apply for that.

Furthermore, the Indian centers should be permitted to administer these programs. They hardly ever turn anybody down, unless they don't have the money themselves, and they usually do a lot better job of both referral and orientation.

You will remember, Commissioner, that in 1972 a business type of organization in Los Angeles was setting up business, and the Bureau had approximately $78,000 to $98,000 tied into two industrial buildings; and things that neither the chamber of commerce, the mayor or the other Indians knew about.

Commissioner **Whitecrow**. Madam Chairman, before I forget my point, the point that I want to bring up here is—and I fully understand that this process that you just explained has been required in the past—this would not necessarily transpire in this process by providing that that specific urban center be funded, be operated, and be contracted to their particular tribe.

The individual urban Indian in that location who goes to that facility and completes his necessary application, that facility then would contact his tribe and receive the authority to go into this ritual work, to provide those specific services.

It would not be provided by his catching his freight train all the way back to Oneida, or wherever, and become eligible and then be relocated. He would already be there. He would not have to return. The only thing this does is provide the individual an opportunity to establish his relationships with his tribe.

Commissioner DEER. I think we have run out of time. We are 5 minutes into overtime, so we will recess the Commission meeting until 2 o'clock.

[Whereupon the meeting was recessed at 12:35 p.m., to reconvene at 2 p.m.]

AFTERNOON SESSION

Chairman **Abourezk**. The Commission will come to order.

I have two announcements to make. Are all the Commission members here? The meeting tomorrow, and if there is a Saturday meeting, will be held in room 457 of the Russell Senate Office Building, in the Small Business Committee hearing room.

The other announcement is that we will today complete chapter 8, and then go on over until tomorrow for the remaining chapters. The staff tells me they believe we can complete everything tomorrow. I appreciate the restraint on the part of the Commission members and the staff so far as getting the sessions completed. We should have had time limits all year long.

Where are you at now, Paul?

Mr. **Alexander**. Chapter 8.

There are four sections to chapter 8. The first section is a general discussion of problems in the welfare systems. We do not make specific recommendations in this chapter, and I would like to explain that.

Chairman **Abourezk**. You make no recommendations in the chapter?

Mr. **Alexander**. In this section on the delivery of public welfare systems: This is an area that was overlooked in all of the task forces and some of our staff people did some basic research; and what we did, is identify problem areas on page 8.

The recommendation actually is that Congress should authorize substantive research in the problem areas that need to be addressed.

We did not have sufficient time to deal with this very complex issue and come up with specific information; so what we did is we identified a series of problem areas that goes for two pages.

The system is not uniform. There is disparity in the operations. There are substantial questions as to when the different systems operate; and what we are asking for here is further research in these problem areas.

Chairman **Abourezk**. All right.

So is there a motion then to adopt this section even though it does not contain recommendations?

Commissioner **Dial**. I make such a motion.

Chairman **Abourezk**. A second?

Commissioner **Whitecrow**. I second.

Chairman **Abourezk**. All those in favor will raise their right hand. The section is adopted by a vote of 6 to 0.

Mr. **Alexander**. The second section is child placement; we dealt with that at our last meeting and it was adopted by a vote of 7 to 0 as I remember it.

Chairman **Abourezk**. OK, what page are the recommendations on health?

Mr. **Alexander**. They are on page 69—starts Findings and Recommendations.

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The first set of recommendations on page 69 referred to urban health problems and the three recommendations contained there are to appropriate sufficient funds for the continuing function of the urban Indian centers in the health area.

The urban Indian centers in this area basically provide some clinical work and mostly intercede between other delivery services in the individual Indian who is having troubles getting health services.

The second recommendation is to mandate that the Office of Civil Rights and HEW effectively monitor discriminatory practices by non-Indian delivery systems to eligible Indian persons.

Chairman Abourezk. Pat, have you talked, in this section, about the experiments that are taking place on Rosebud and on Navajo on the mobile health vans?

Dr. Zell. No.

Chairman Abourezk. Do you think that should be included in there? I think it ought to be. It is an experiment, a model that can be used in nationwide rural health care, in fact, and I think very important.

Mr. Alexander. There is one other that could be added and that is the experimental program that was conducted in Alaska through some satellite system which also had that.

Chairman Abourezk. Is there any objection on the part of the Commission members to including that in a sort of discussion at least?

Without objection then, I think the staff should include at least one or two paragraphs on those programs.

Mr. Alexander. OK.

There also is a recommendation for supplemental funding of Indian Health Service for medical care for the isolated Indians. I would like to take these cluster by cluster.

Chairman Abourezk. Are there any questions on this part?

Commissioner Deer. Mr. Chairman, as I recall, when we discussed this before, one of the major areas that was lacking was the mention of the Indian Comprehensive Health Care Act and its implication for Indians.

Has that been incorporated in this?

Mr. Alexander. That was back several meetings ago. Yes; there is a whole section in this chapter on the Indian Health Care Improvement Act of 1975; what its implications are and what some of the potential limitations are, in that some of the recommendations that are addressed are supplemental to what is provided in the Indian Health Care Improvement Act.

Commissioner Deer. Thank you.

Mr. Alexander. What I was suggesting a moment ago—as the recommendations do go on for about six or seven pages, and they are detailed in the areas of staffing off-reservation problems, and so on—I think it would be useful to adopt it section by section. Vote on it section by section rather than take it all at once.

We can't do this at the moment. In the interim, we will go on and explain the recommendations and the facilities.

Dr. Zell. Essentially, in regards to the section on facilities, most of these recommendations should be considered as a part of our last Commission meeting and the discussion on health issues. The Commission staff has now analyzed the alternatives and the recommendations herein, and those recommendations that we feel the Health Care Improvement Act does not cover sufficiently, either because of funding which is authorized by the Health Care Improvement Act, which upon analysis seems to be insufficient to accomplish those goals that were stated in the Health Care Improvement Act.

That would be the authorization and the appropriation of funds in essence of those authorized under the act. I can't remember the exact figures. I don't have them right in front of me, but the funds that were authorized to construct IHS facilities, we estimate—I think it was something like $20 million, which would probably build maybe two large facilities and wouldn't begin to meet the need.

One of the major concepts involved here is contract health care which IHS provides to facilitate meeting the health needs that IHS, itself, cannot meet and must contract out with other health care providers.

As was stated before, numerous other health care providers do act in a discriminatory fashion in providing health care to Indian people and have frequently denied services. Therefore, we feel it is appropriate that there be an office of civil rights monitoring of contract health care providers to assure that the Indian people are not turned away from treatment.

As Paul stated before in another section, we feel the Health Care Improvement Act does not address the facilities of health care services provided to rural areas and those people who do not have immediate access to the health care facilities.

On page 71, the major issues addressed are the problems that IHS faces now that the Public Health Service may not have doctors because the end of the draft deferment of obligatory service to Public Health Service is soon to be phased out.

There is going to be a decrease of Public Health Service professional personnel available to the Indian Health Service.

The Health Care Improvement Act does not address what is going to be done in the interim to increase the staffing in IHS and to provide active recruitment and benefits to health professionals who come on the reservation and to set up permanent homes there.

Chairman ABOUREZK. On page 72, "the traditional medicine demonstrations school in Rough Rock, Ariz., will establish summer schools on other reservations." When we say traditional medicine is that the medicine man?

Mr. ALEXANDER. Medicine man and woman; yes.

Chairman ABOUREZK. Is that school funded by the Government now?

Mr. ALEXANDER. Yes.

Chairman ABOUREZK. One thing I guess I don't quite understand is why the Government would have to get into training medicine men. To me that is something that is beyond the reach of any formal kind of training.

Dr. ZELL. I think we are thinking of this more in terms of Public Law 93-638 and the philosophy embodied therein. That there should be some policy on the part of Indian Health Service that recognizes that the training of traditional medicine men be incorporated in IHS treatment. It is not that we are asking for additional funding for the training of additional medicine men, but that it be IHS policy to allocate some of their funds to assure that the traditional medicine people are brought into the IHS services.

Chairman **Abourezk**. I understand that this is your goal, but I am trying to find out why. Why it should be funded when it does seem to be, at least, a system that goes well beyond the purview of formal medical training.

It's sort of like the Government is saying, "We are going to establish a Government-funded program to teach Indian religion."

It just seems to me that that is a thing that is handed down in the families as well as traditional medicine men training. It is handed down within the families and within the groups and so on. I don't personally see any reason, unless somebody can show me different, why that ought to be funded by the Indian Health Service and by Congress.

Dr. **Zell**. I would suggest, Senator, that IHS is the first organization to admit that they cannot meet the health needs of the Indian people and they need all the help they can get.

Chairman **Abourezk**. But that is because of the shortage of money; that is because nobody will appropriate enough money for IHS; it is not because IHS couldn't possibly meet the health needs, that they are incapable of it, it is just that they don't have the money to do it.

Dr. **Zell**. Perhaps the difference in what that money can buy is the difference between a medical professional—an M.D. as we know it—and a traditional medicine man whose treatment might be more appropriate to many cases that Indian Health Service confronts.

Mr. **Alexander**. This recommendation comes from task force No. 6. I just went back to the task force on it, and the logic behind it is severalfold.

That to enter for training you would be able to document, if you will, some of the practices and be able to maintain the traditions. As you probably well know, the training for medicine people is a long-term process spent informally over the years. We are now in a society where people have to earn a living. It is difficult outside of a funded, supported context to train a medicine man or a medicine woman. The other part of that is that would also provide a forum where the non-Indian doctors, the medical professionals as we define them in this society, would have a forum for interacting with the medicine men and women, which is conceived of by the task force report; and we agree with them.

It is a very, very important step in the delivery of effective medical services. On that point the World Health Organization recently adopted a policy of making the delivery of health services around the world to be as culturally relevant to the indigenous society as possible, to incorporate as many of the local uses as possible: and would provide an interaction forum for the M.D. and other health professionals, with the Indian health professionals; and also provide a forum to continue training medicine men as has been done on an informal basis for many years.

That is now difficult to do, continued on an informal basis because of the long time it takes, and the constraints of having financial support while going through that. That is generally what the task force has identified.

Chairman **Abourezk**. You are talking about IHS not being able to take care of the health needs of Indians. Isn't allocating money for this kind of thing taking away money from the Indian Health Service?

Mr. **Alexander**. I guess there is a distinction between more delivery and effective delivery. In the concept of utilizing Indian health professionals, whether they be known as medicine men or medicine women, that would make their delivery system much more functional.

It has relevance in many areas, but the one that is often spoken of is in the mental health area and in the treatment of alcoholism and drug abuse.

I am familiar, from a series of hearings in the Southwest, with the substantial complaints that many Indian people have about the type of professionalism of the M.D.-trained person in deliveries——

Chairman **Abourezk**. That is not only the complaint of the Indians; that is the complaint of a lot of whites, too.

Mr. **Alexander**. True, and the interjection in what would be a long-term process of both systems could make for a much more efficient and effective delivery system, so it is a difficult, long-run treatment.

Chairman **Abourezk**. Also, what we call the traditional medicine man: Isn't he some kind of a traditional holy man, too? So we are interlocking the terms.

Mr. **Alexander**. I would prefer to defer to someone else.

Dr. **Zell**. That would depend on the Indian culture of the tribe you are referring to, but I do think it is very important that, when we talk with all this knowledge that the hospitals and health care facilities for all of us are pretty frightening places and there are many Indian people who wouldn't seek out IHS services, were they not endorsed or suggested by the traditional medicine man.

We feel that it just is a very necessary matching in that you are going to bring together the Indian culture and our highly sophisticated health care professional services; that the two need to work in close harmony with one another.

Chairman **Abourezk**. What I am objecting to is the fact that that is—I am having a hard time articulating.

That kind of thing ought not be to funded by the Government. I just don't understand why and your explanations haven't satisfied me personally.

Maybe the other members have something.

Dr. **Zell**. I would say to establish the IHS to meet the health needs of the Indian people, and given that maybe we will never have adequate funding to fulfill this goal—this legislative mandate—the incorporation of medicine men and hopefully, expanding the population base, the target population to be served exactly fulfills that goal and speaks of that goal, and IHS could only be serving its legislative mandate.

Chairman **Abourezk**. Do you think that there will be medicine men if they don't get funded?

Dr. **Zell**. Absolutely.

Chairman **Abourezk**. So they will do it without Government funding; right?

Mr. **Alexander.** I think that the task force indicates that in today's society, it is a difficult process to become a medicine man or a medicine woman; and there is a danger of diminishing numbers.

One of the conceptions which I think is really important is that the medicine man and medicine woman—they vary considerably; some of them are defined as diagnosticians, some as treatment persons, some have religious connotations, and so on—should be acknowledged as a health professional.

Now, if we make that classification in our understanding then I don't think we have a significant problem. We don't have a significant problem where we say to fund the training of doctors, or to fund the training of psychiatric social workers; or to fund the training of alcohol counselors.

If we understand it in the context that the medicine men or medicine women are physical health professionals, I think the other problem is remote.

Commissioner **Whitecrow.** Mr. Chairman, if I may speak on this, being somewhat familiar with the delivery of Indian medicine.

I would like to just make this particular observance: The Indian medicine man and their training is a very, very long process; in some instances a lifelong process of training. The training facility demonstration school has come about and has been a tremendous asset to Indian medicine and to the acknowledgment of Indian medicine as a competent delivery service.

However, I think I would have to concur with Senator Abourezk in wondering whether or not this would be an Indian Health Service requirement to be funded by the Federal Government.

I believe, if we are talking totally about Indian self-sufficiency, that this certainly should be an area in which tribal governments should undertake as a very special area of interest, because each tribe has a separate culture insofar as medicine, and other cultures in song and dance is concerned.

I really have some reservations about setting up a department here, such as establishing similar schools on other reservations. I sometimes wonder if other reservations would want that type of a school established. Of course, this allows for negotiation.

I do feel that it might be possible to incorporate within this recommendation a mandatory recognition by the Indian Health Service personnel, and their professional people, that anyone who is recognized as an Indian medicine man should have profesisonal status within that facility.

I believe that would be an item that could be purchased and would be marked by the Indian community.

Dr. **Zell.** I think that is an excellent suggestion. It seems that there may be an air of confusion and they were not asking for Government funding to train the Indian medicine men in their own Indian medicine; but rather that they be incorporated in the IHS health provisions.

Commissioner **Whitecrow.** I think that should be included in the test.

Indian people, as they read the text, could see that we do that. We could make the recommendations to the tribe and they could take those specific recommendations if they desire and their trained professional people would be recognized in the Indian Health Service as proper professionals in medical care.

Chairman ABOUREZK. I wonder if the Commission might agree to the following amendment: That that whole recommendation should be stricken.

Instead, put in language that would say something to the effect that the Commission or Congress, however you want to do it, takes the position that the recommendation should be somewhat as follows: That the Commission encourages the use of traditional medicine by an Indian tribe, whenever such a tribe finds it desirable to do so.

And then, if a tribe wants to contract under Public Law 93–638 for medicine, they are perfectly free to do so. I just want to be very frank with you here.

Being a practicing politician, I keep looking for areas in this report that might be plugged out by some newspaperman who might say: "Just look at the crackpot ideas these guys have come up with." There is a kind of little warning bell that goes off inside of any politician when they see something like this particular recommendation. I am just afraid that might become a front page newspaper story if we adopted that.

Dr. ZELL. I would suggest only one counter, which concerned me in meeting the newly published IHS standard for contracting, and that is, anyone who is considered to be a health care professional—when a tribe contracts IHS services—must fulfill Civil Service Commission standards which I don't believe most traditional medicine men would fulfill.

Chairman ABOUREZK. Well, then you can recommend that particular exemption from the Civil Service Commission standards in your recommendation.

Just put in there: In the event any tribe wants to contract for such traditional medicine the requirements of section such and such would not apply.

Will you take care of that? Is there any other comment? Would the Commission agree to that kind of an amendment?

Commissioner WHITECROW. That would be placing the Indian medicine man up with the professional status. That is what we are talking about, isn't it?

Chairman ABOUREZK. It doesn't place him anywhere. It just says they are encouraged to do it if they want to and they don't have to follow the Civil Service Commission requirements if they don't want to.

Commissioner WHITECROW. Would that allow for the professional approach of that particular Indian medicine man, if we did it this way?

What I am concerned with is that the Indian medicine man, going into an Indian health facility and delivering service, should be treated as a professional of health delivery along the same mantles of a physician in the Public Health Service.

Would you agree with this?

Dr. ZELL. Yes; I think that is the professional status that we are speaking of.

Chairman **Abourezk**. All right, if you would make that change then, Pat. We will hold off until the next meeting and you can offer us the exact language that we are talking about.

Is that agreeable with the Commission members?

Commissioner **Bruce**. May I ask a question? How many medicine men are we talking about? We have a figure somewhere, but how many are there?

Dr. **Zell**. I believe it is in the health task force report. I don't know the figure right off the top of my head.

Chairman **Abourezk**. While you're looking for that, do you want to wind this up?

Dr. **Zell**. Yes. I would think that the major recommendation in the terms of health—and this is upon our analysis of the IHS organizational structure, budgeting system, management instructions, and the communication that exists between services and area offices, program offices, and central offices of IHS—it is our conclusion that despite the major advancements in potential that the Health Care Improvement Act may hold, the management and funding structure of IHS is such that we believe that the dollars under that act will not reach the reservation level; or in this case, the service unit level in terms of providing direct treatment.

So, on page 72, we ask that Congress authorize a management study of the Indian Health Service to be conducted by the General Accounting Office, or to be separately contracted.

We feel this is very important to the effectiveness of the Health Care Improvement Act.

Chairman **Abourezk**. OK. Any questions?

Have you found that number yet, or are you still looking?

Mr. **Alexander**. We are still looking.

Commissioner **Deer**. I just wanted to ask you why you thought that funding would not get down to the reservation level?

Dr. **Zell**. Our analysis of the administrative cuts that are taken off at the central office level, the program office level, and the area office level, which provides technical assistance for the services, sharply cuts into that dollar that is targeted for the services. One of the big problems in IHS is that there may be a specific amount of money allocated to the service unit, but that money may not come down in dollars. It may come down in machines or equipment. However, that service unit may need staffing. That sort of flexibility, in the budgetary system, would not be consistent in IHS. So you may get machines instead of people, or people instead of machines and health care improvement, and certainly doesn't address the budgeting of IHS, either in the management or budgeting of IHS.

We feel it is vitally important to investigate the structure of IHS to make sure that the money that is allocated under the Health Care Improvement Act does eventually reach and help to treat the Indian people.

Chairman **Abourezk**. Can I just make a comment on page 72, section C, budget and management?

My only comment is that the language there sounds a bit too bureaucratic. "The IHS budget is rigid and fails to accommodate actual servicing of needs. Position funding in fixed medical categories does not permit service unit flexibility for making optimum use of staff."

Would somebody please change that?

Dr. **Zell.** Yes, sir.

Mr. **Alexander.** You would like it in English?

Chairman **Abourezk.** Yes; put it in English. It would be helpful. I mean, without changing the substance of it, whatever that may be.

Mr. **Alexander.** Well taken.

Dr. **Zell.** I would refer the Commission to page 74—recommendations addressing the U.S. Department of Agriculture. I think we discussed this a bit in our previous meetings. The fact that the commodity food program is being phased out and the food stamp program phased in is perhaps particularly relevant to urban communities, but not particularly relevant and certainly not ever effective on a reservation.

There needs to be mechanisms for delivering food out to those rural areas. There needs to be access to traditionally managed food stores on a reservation. The food stamp on a reservation doesn't go as far as it does in any city in United States, and I think that the buying power of that food stamp has not been closely scrutinized in relation to the Indian community.

Chairman **Abourezk.** Any questions or comments?

Do you want to move onto the next part?

Dr. **Zell.** Generally, I would refer the Commission to page 75, the first set of recommendations, and that is as I said before, but on a more general level.

Our analysis of the moneys authorized under the Health Care Improvement Act, not only for construction of hospital facilities, but for other needs addressed in the act, seem to be insufficient to achieve the goals stated in the declaration of policy and the Health Care Improvement Act.

Chairman **Abourezk.** All right. The next section.

Dr. **Zell.** There is some documented evidence, and considerably more evidence that we can't document right at this point, that there has been some reluctance on the part of IHS to cooperate with the implementation of the Indian Self-Determination and Educational Assistance Act.

They have been very slow in publishing their recommendations. The IHS standards for P.L. 93-638 have just come out stating that there will be at least two more manuals to be undertaken by IHS before the feasibility for contracting can even be evaluated. There seems to be a lack of compliance in other respects and we would like to see Congress put whatever pressure is necessary on IHS, because it is chiefly directly targeted to serve the Indian people.

Chairman **Abourezk.** The next section.

Dr. **Zell.** The other major finding is on page 73. This is the establishment of an oversight commission which would insure the coordination of the Bureau of Indian Affairs, Housing and Urban Development, and the Indian Health Service, in the budgeting and planning cycles for the construction of water systems, houses, and sanitation facilities until such time that the feasibility of transferring these functions to an independent Indian agency can be evaluated.

Chairman Abourezk. The next section.

Commissioner Whitecrow. Mr. Chairman, may I ask Pat? On page 73, on that first set of regulations in establishing an Executive order, "an Executive order should establish oversight mechanism through which BIA, HUD, and Indian Health Services would be mandated to coordinate budget funding cycles for construction, repair, maintenance of roads, houses, water systems, sewer systems, and sanitation facilities."

Is not this requirement already included in the budgetary process—according to the management review study that has been completed of the BIA?

Dr. Zell. Is it mandated by the Bureau?

Commissioner Whitecrow. Yes; is it not already mandated in that budgetary process?

Dr. Zell. Well, the Bureau has only one-third of that. The nature of the budget in HUD and IHS is such that HUD has a more flexible sort of budgetary process, wherein, in a 90-day period of time, they can say we will build so many houses on a reservation. The nature of the Indian Health Service budget is such that when they are notified by HUD—let's say in the year 1976—that HUD will be building 50 houses on a reservation, the IHS budget cycle is such that they would not be able to put in sanitation facilities for those 50 houses for another 3 years; because their budget requests have to go through the process of HEW, request for allocation and appropriation.

Commissioner Whitecrow. Would it not be better then, to include the tribal government in this coordination?

Rather than just BIA, HUD, and IHS: Would it not also be desirable to include the tribal government in that budgetary development and coordination?

Dr. Zell. The tribal governments have been very active in trying to bring these three agencies together, and they met with very little effectiveness, in spite of the triagency memorandum by OMB pressure upon the three agencies to coordinate.

Indeed, the tribal government is involved, but we would like to put some mechanisms in it where we can really see the agencies working together.

Commissioner Whitecrow. If we request an Executive order establishing the mechanism: Should we not also include the tribal government in that coordination mechanism?

Dr. Zell. That is implied, but we will insert that to make it perfectly clear.

Commissioner Deer. Go on to the next section.

Dr. Zell. The next section is education, which I believe Paul is going to take.

Chairman Abourezk. All right.

Has there been a motion made?

Commissioner Deer. I move to adopt the recommendations on health.

Chairman Abourezk. Who seconds that motion?

Commissioner Borbridge. I do.

Chairman Abourezk. All right. Those in favor of adopting the health section raise their right hand. The vote is 6 to 0 in favor of adopting and it is adopted. I am told that the education section has some problems; is that correct?

Mr. **Alexander.** That is correct.

Chairman **Abourezk.** So you cannot move any further today; is that correct?

Mr. **Alexander.** That is correct.

Chairman **Abourezk.** So, therefore, we will adjourn until 10 o'clock tomorrow morning in room 457 of the Russell Building. The meeting is now recessed.

[Whereupon the meeting was recessed at 2:55 p.m., to reconvene in room 457 of the Russell Building at 10 a.m. on Friday, February 25, 1977.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

FRIDAY, FEBRUARY 25, 1977

American Indian Policy Review Commission,
Washington, D.C.

The Commission met, pursuant to notice, at 10 a.m., in room 457 Russell Senate Office Building, Senator James Abourezk (chairman of the Commission) presiding.

Present: Senator James Abourezk, chairman; Commissioners Ada Deer; John Borbridge, Adolph L. Dial, Louis R. Bruce; Jake Whitecrow; and Congressmen Don Young and Lloyd Meeds.

Staff present: Ernest L. Stevens, staff director; Peter Taylor; Paul Alexander; Donald Wharton; Charles Wilkinson; Dr. Patricia Zell; Max Richtman; Gill Hall: Alan Parker; Karl Funke; Fred Martone; Eileen Stillwaggon; and Winona Jamieson.

Chairman Abourezk. The Commission will come to order.

Let the record show that a quorum of six people is present for the continuance of the meeting from yesterday. We will ask the staff to begin. What do we start with this morning, chapter 8?

Mr. Alexander. Chapter 8, page 120 for the education recommendations. These are a revised set of recommendations based on our discussion last time. The same three policy thrusts are identified in the opening paragraph, which is consolidation of Indian education programs into the consolidated Indian agency, which is recommended in the Federal administration chapter.

A shifting of control of funds to tribal governments and training for counselors, administrators, and tribal educational programs. Recommendation No. 1 is the consolidation recommendation. It is very straightforward. At an appropriate time all Federal education programs in the Indian education programs will be removed from their present agencies to the consolidated Indian agency.

Chairman Abourezk. Paul, once again as a matter of style, this recommendation is not in its final stylistic form, I hope.

Mr. Alexander. Well, actually, the second clause should come first. Congress should buy appropriate——

Chairman Abourezk. Let me interrupt. I should announce we have a distinguished guest in the audience this morning—LaDonna Harris, from New Mexico.

Mr. Alexander. Recommendation No. 2 is directed at the real adjustment of the funding mechanism on Indian education money. There are four specifics. The first one is the authorization of a tribal monitoring system through which impact aid 874 and 815 would be passed through to the local tribes with a settlement for administrative expenses to have some influences on the education of Indian children.

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I think we should point out one fact: At the current time 70 percent of Indian children are being educated in the public schools as opposed to BIA—more Indian-controlled schools than the recommendation acknowledges—that current actuality is the significant problem of Indian parents and communities and tribes and impacting on the educational system in educating their children.

The second specific is an amendment to Public Law 93-638, the Indian Self-Determination Act, which would authorize an elected board of regents representing many tribes to administer certain types of institutions.

Dr. **Zell.** Presently, under Public Law 93-638, intertribal organizations are not eligible for contracting so this provision would allow for duly elected representatives of each tribal government concerned to be eligible under the 638 regulations to contract.

Chairman **Abourezk.** As a matter of style, this recommendation form should be changed again to say that Congress should and so forth.

Mr. **Alexander.** Yes. The third specific is amendments to Public Law 93-638 and the Johnson-O'Malley Act. Again this time for a tribal monitoring system on pass through to the State and local educational system to determine tribal impact of how that money is allocated. That recommendation also acknowledges that there is a full gamut of Indian participation in the educational system running from tribally controlled schools to the monitoring system, and that where a tribe elects to establish its own school systems, these moneys would be provided to the tribes for the pupils going to the tribal school system.

Chairman **Abourezk.** I have a question. Have you had any limit on the set-aside for administrative purposes and if you don't have, then shouldn't there be a limit of some sort?

Mr. **Alexander.** There probably should be an administrative limit, but we have not calculated what would be a minimum or an adequate administrative set-aside. But that could be formula based.

Chairman **Abourezk.** Does the Commission think it would be a good idea to put in language calling for a limit of some kind?

Mr. **Alexander.** I would suggest for language in there that the consolidated Indian agency, by regulation, establish a formula which would be submitted to Congress for either a veto or approval. This is one approach for the financing of such a formula.

Chairman **Abourezk.** But if the Commission agrees: Shouldn't we just put in language saying what the limitation for the set-aside is, without specifying what it ought to be, just to show our position?

Commissioner **Deer.** Is there a question now of a limit on the administrative set-aside in the current legislation?

Chairman **Abourezk.** There is no set-aside.

Commissioner **Deer.** Because my comment would be: It should at least be the same as what the current situation is.

Chairman **Abourezk.** It is brand new so there is no precedent.

It is not all that important a thing. I just wondered if it wouldn't be good policy. It is up to the Commission. What do you think?

Commissioner **Deer.** It sounds reasonable to me.

Chairman **Abourezk.** I would hate to see a new bureaucracy spring up with the availability of these funds. Obviously, there has to be some sort of compensation for administrative costs. But I would hate to see a bureaucracy cranked up with unlimited funds and start firing a lot of people and take away money that would be used for education otherwise.

Mr. **Alexander.** I think the formula basis, which would take an actual need of administering a monitoring program, could be worked with significant Indian participation.

I couldn't tell you what the percentage would be, but I think that would be a reasonable approach.

Chairman **Abourezk.** All right, so everybody is pretty much agreed on that. Put in language saying what the appropriate limits are to be on the amount set aside.

Mr. **Alexander.** OK.

The fourth specific refers to the situation, that many people are aware of, which is that many State and local governments have not utilized Johnson-O'Malley Act funds for the purpose that Congress established.

There have been some fairly significant controversies over that. There has been protracted legislation in the Gallup-McKinley school system. As I understand it, even with protracted limitation in that area the situation is not pure.

We recommend, essentially, the type of remedies that Congress established in Federal revenue sharing where a State or a municipality is not in compliance with how those funds should be utilized.

Are there any questions?

Chairman **Abourezk.** Any questions or comments?

OK, is that it?

Mr. **Alexander.** No; there is one more subsection.

The third recommendation is based on the thrust of this chapter, which is: There is today a movement toward control of education by Indian communities and tribal communities. In recognition of that, there are a number of needs that have been identified in terms of specialists, paraprofessionals, certification of Indian educators, the development of a system for curriculum and library developments, and establishment of a clearinghouse for educational information.

We make a number of specific recommendations that would be under the umbrella of the consolidated Indian agency. Congress would direct that agency to establish programs in line with this movement toward the control of education by the Indian tribes.

Chairman **Abourezk.** Paul, I have no disagreement with the substance of what you are saying. Once again I wish the staff would write the recommendations in the form that we agreed upon earlier in the Commission proceedings—to make it clear to Congress what they ought to do at the outset of the recommendations.

Mr. **Alexander.** They are in the paragraphs. Unfortunately the drafter here made them always the last sentence, and we will reverse that order and put the explanation afterward.

Chairman **Abourezk.** So I don't have to keep bringing it up, I want assurances that you will do it each time so I don't have to sound like a broken record.

Mr. **Alexander.** The next set of recommendations are directed to all reservation boarding schools which we discussed at some length at previous meetings. Basically the thrust of the recommendations is that not that off-reservation boarding schools should necessarily be closed down but they should serve the actual needs of the students being sent there, which in essence tends to be special educational needs.

Some of them should become vocational, technical trainers in training institutions, and the curriculum of those institutions should reflect the student body. There is also a thrust in the report that wherever possible the schools be established so that they are boarding schools within reservation areas.

This is directed at the existing boarding schools. There is a range of specific things that those boarding schools could be doing and they are all doing generally the same kind of academic programing, even though students are sent there sometimes either because they have special learning problems or behavioral problems or what have you. Those schools are not addressing the needs of their student bodies.

There are a series of specific things delineated that those schools should be geared to doing—not every school on all things. They should be like the special schools in the city of Boston that are designed around special program areas: for gifted students, vocational students, et cetera.

That is the thrust of that set of recommendations.

There is another section that is addressing itself to scholarship programing for Indian students. In this one the thrust is that scholarship funding should go through Indian organizations and tribes, and that there is a specific need still for more scholarship programs, particularly in the area of Indian-controlled colleges.

The next set of recommendations are directed toward postsecondary education for Indians, which asked for increased funding for Indian-owned and Indian-operated colleges, research funds, the need to establish certain postsecondary vocational institutions and the need to establish a permissive consortium arrangement between the higher education systems controlled by Indians.

There are several things that need to be mentioned by this chapter in that it does not cover all the education issues. In the off-reservation area there are a number of specific education recommendations and in the nonfederally recognized sections there are also a number of specific recommendations having to do with interim funding mechanisms.

Most of this chapter is geared toward reservation Indians and that should be recognized.

Chairman ABOUREZK. Under postsecondary you say Congress shouldn't initiate legislation. I think you want to say Congress should enact, and everybody here is happy with initiate, but I just don't want to appropriate.

Any comments or questions?

Commissioner BRUCE. Mr. Chairman, you mentioned there were some other issues on education.

Mr. ALEXANDER. Yes.

Commissioner BRUCE. When do we face those, on the fourth?

Mr. ALEXANDER. When we come back with the off-reservation chapter there will be specific education recommendations. The policy for drafting was where there was more specific areas that something could be covered in, that it would be covered in that area.

Now, when the final editing of this report is done, there will be cross-referenced recommendations. In a sense, this chapter will then have added to it those specific recommendations for urban Indians and so on, but they are contained in other chapters. We felt it was more appropriate to deal with them in the context of that specific problem area for drafting purposes.

Chairman ABOUREZK. Any other questions or comments?

If not is there a motion to adopt this section?

Commissioner DEER. I so move.

Commissioner BRUCE. Second.

Chairman ABOUREZK. Those in favor of adopting this section will raise their right hand.

The vote is 6 to 0 in favor of adopting and the section is adopted.

Mr. ALEXANDER. That completes this chapter.

The next chapter on the agenda is tribal government and I would like to switch teams a bit.

Chairman ABOUREZK. I would like the staff to refer to the page number they are talking about as they switch pages. It would be helpful to the Commission.

Mr. ALEXANDER. We would like to have one agenda switch on the tribal government section, which is the section B, constraints. We would like to do that first, simply because it has to do with the preparation of the Federal administration chapter later on, and I would like that staff person to do that first.

Chairman ABOUREZK. Fine.

Mr. ALEXANDER. I will give you the page number. The first set of recommendations we would like to start on page 62.

Chairman ABOUREZK. I don't have page 62.

Dr. ZELL. This section of the report is entitled "Constraints on Tribal Government Governing Capacity," and it consists of three sections, the first of which is the administration of the trust responsibility by the Bureau of Indian Affairs.

Because the trust responsibility is defined to entail the protection of tribal trust funds and resources as well as tribal self-government, the information contained herein is information gathered from the public hearings conducted by task force Nos. 2 and 4, in which the Bureau of Indian Affairs has, on many occasions, interfered with or acted to directly undermine tribal government, and misuse the assets of Indian tribes.

The recommendation is that Congress should mandate the Bureau of Indian Affairs to be held accountable to the highest judicial standards as the trustee and in its role as representative of the prime agent of the trust, the Department of Interior, and the administration of the U.S. trust responsibility.

Chairman ABOUREZK. That is a general recommendation. Is there a more detailed part of that somewhere in the chapter?

Dr. ZELL. No; essentially this is a compilation of information that we thought should be recognized by the Commission as to the conduct of the Bureau of Indian Affairs.

Mr. TAYLOR. I think, Mr. Chairman, the chapter on trust responsibility, which we dealt with in the last session—I believe we came to a vote on it—which would be chapter 4, does touch on the responsibility of the Bureau of Indian Affairs and the Federal Government itself, for mismanagement of trust resources, the possibility of legal remedies—equitable or monetary.

I would refer to an exchange that we had with Commissioner Whitecrow involving the Bureau of Indian Affairs. People would fail to come out and stop people from cutting down wood on tribal trust lands, and that the solution to that problem would lie in establishing some monetary liability.

I believe our provisions in the trust chapter do touch or reach to the broader issues that are discussed in this chapter.

Chairman **Abourezk**. Then I think it ought to be left to the trust chapter. This doesn't really say much of anything. I don't know how to implement this.

Mr. **Taylor**. What we could do is cross reference this recommendation. The findings are relevant to this chapter on tribal government and the relation with the Bureau of Indian Affairs. The recommendations I agree are more properly found in the chapter on trust, so we can simply cross reference over to it.

Chairman **Abourezk**. I wouldn't know how to implement this particular recommendation because it is meaningless to me. I know what you are trying to say, and what I think we ought to have, if you are to have this recommendation in here, is a way for Congress to do it.

It is the task of the Commission to show the Congress how to do it, as well as to recommend it, I think. In other words, if the Congress has to look at this and say, "What does all this mean?" then it isn't much use to have this Commission.

Mr. **Taylor**. I quite agree with you. What I am trying to say is we did have specific remedies in chapter 4, and we will take this recommendation out of this part because it is nebulous.

Chairman **Abourezk**. I think you could leave the finding in, it is wonderful. Unless you have something a little bit more specific, I think it will just confuse people here.

Mr. **Taylor**. Yes.

Chairman **Abourezk**. Is there any other comment on that?

Mr. **Martone**. You will recall that when we discussed the chapter on Federal trust responsibility, we had some heated argument as to what essentially that meant. It was my position that any responsibility of the Government was based on Federal treaty or statute. The members of this staff felt that the responsibility was a broader, vaguer notion, not tied down to a specific legal treaty created by positive enactment.

At that time the language of that chapter was in fact changed to reflect, I think, a partial recognition that whatever that was it probably didn't include self-government, that it was limited to trust resources.

I do not now have the language with me, but I am sure the record will reflect that the language as it was amended in chapter 4 is inconsistent with the language on page 63 and page 65 of this section.

It seems to me to be inconsistent. If this chapter is to stay that language will have to be consistent with the language of chapter 4.

Mr. **Taylor**. I assume, Fred, that the language you are referring to on page 63 is with the responsibility of the Government to protect tribal governments. Is that correct?

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Mr. Martone. The language that I referred to on page 63 is as follows: "The trust principle approves the permanent obligation to provide those services necessary to protect and enhance land resources and self-government." The same language appears at the bottom of page 265.

That language was rather radically changed since chapter 4, and it seems to me if this chapter is to remain, then that has to be changed.

Mr. Taylor. I think we would have to refer to the transcript. I remember very well the discussion on this, but certainly I know very well that we never agreed to say that the first responsibility did not pertain to the protection of tribal government.

There was considerable discussion of the word "enhance," and there was also discussion about monetary liability or failure to deliver service-type systems such as health and education. But tribal government is certainly not deleted from within the protection of the trust responsibility. What I would suggest, in view of this, is that we conform the language that appears on pages 63 and 65 to the language that appears in chapter 4, based on what the transcripts reflect. That way we can proceed forward with the more immediate problem that is under discussion; namely, the relationship of tribal governments to the Bureau of Indian Affairs, and the problem in the Federal delivery system.

We intentionally have skipped past tribal government in the context of sovereignty. It is a discussion that we will have to have either this afternoon, or maybe later, but it can go on interminably, and there are very important parts of tribal government that we simply have not dealt with.

So, perhaps, we could bring this trust parameter up again this afternoon. In the meantime I would suggest that we deal with mechanical problems that were throughly dealt with by Pat.

Commissioner Whitecrow. Mr. Chairman, I believe this particular recommendation, on page 62, could be better reflected as an additional finding because on page 14, in chapter 4, in the trust responsibility section 3, under policy, first paragraph, as we changed it, the trust responsibility to American Indians is to establish legal obligation which requires the United States to protect and enhance Indian trust and resources, and tribal self-government.

I believe that is the particular recommendation we have already approved. The reading bears out exactly to what this recommendation on page 62 alludes.

So, in fact, all we have here is just a duplication of something that we have already approved.

Chairman Abourezk. I don't recall the exact discussion we had. We are talking about using the words "protect" and "enhance." Did we ever make a decision, does anybody recall? What is the staff's recollection on that?

Mr. Taylor. Senator, I can't recall. I know we had a heated exchange about it. Mr. Yates expressed some concern over it, but I can't recall whether we ever came to a vote on the use of that specific word.

Chairman Abourezk. I can't either.

Commissioner Deer. Mr. Chairman, according to my notes here, I think Mr. Yates questioned the established legal obligation. Again, these are my notes and my recollection, and that he has approved a change of Indian lands to Indian trust resources.

We did not delete tribal self-government.

Commissioner WHITECROW. That is what I have in my notes.

Chairman ABOUREZK. I don't remember deleting tribal self-government, but I do remember the argument over the word enhanced, and I can't remember how we resolved it.

Mr. ALEXANDER. I have sent for the transcript.

Chairman ABOUREZK. Let's go on over it until we get the transcript. I still think I see the same language on page 66 and the same recommendation that you have on page 62.

Dr. ZELL. Yes; it is a summary of major findings and recommendations on both pages.

Chairman ABOUREZK. The same thing applies to that. It is redundant and confusing in that particular context. It should be made more specific or you want to delete it out of those two sections.

Congressman YOUNG. I apologize for being late. I am just curious about these recommendations. To me this is an extremely weak recommendation. It appears that we are condemning the agency and then saying, all right, now, agency, shape up.

But I have had a little experience with that agency. It is under the Interior Department. It is really not a full-fledged agency and is in direct conflict with the Bureau of Lands, and in direct conflict with the parks and wildlife group, in direct conflict with the Bureau of Mines. I see how it is worked. The Commissioner might make a recommendation and he is overriden by the Secretary. I think there may be a recommendation here that says, "All right, let's get an agency that has got some stature, and some position." I know the new administration recommended it.

Chairman ABOUREZK. You mean a separate agency?

Congressman YOUNG. Absolutely, not part of the Interior Department. I know it is in another area, but it is not here. This looks like you are condemning the Bureau of Indian Affairs, and so do it.

I am saying: Let's make it strong enough.

Chairman ABOUREZK. What we have done is to delete these two recommendations. They don't appear to mean much. Have you got a place where you are recommending a separate agency somewhere in the record?

Dr. ZELL. Yes; in the Federal administration chapter.

Chairman ABOUREZK. Well, we have got it already.

Congressman YOUNG. All right, fine; I apologize. I have only been here 2 days.

Chairman ABOUREZK. Let me ask the staff: Can we then delete that same recommendation on page 62 as well as page 66?

Mr. TAYLOR. Yes.

Chairman ABOUREZK. Does the Commission have an objection to deleting those two? If not, without objection they are deleted.

Mr. TAYLOR. Just as a point of clarification: One of the chapters in this book, at the very front, is called executive summary, where these various recommendations and various findings will be consolidated into a tight package so that we won't have this problem of findings being totally unrelated to solutions further back.

Commissioner **Borbridge**. Mr. Chairman, just a matter of clarification on the recommendations to staff: I perceive now that we will be considering the extent and nature of the trust relationship and clarify it or be quite specific in how we understand it as it relates to tribal government.

As I recall, quite specifically, we had a discussion as to the irony that would result were the Commission to agree that there is a definite trust relationship, and then not to enable the tribes through tribal self-government to take care of and protect the resources which were an incident of that very trust relationship.

I assume that this is largly in chapter 4 and is being pooled together in a context so that we can see all of these things together?

Mr. **Taylor**. Yes; I think it will, Commissioner.

Chairman **Abourezk**. Do you want to go to the next section now?

Dr. **Zell**. Yes.

Chairman **Abourezk**. We will come back as soon as we get the transcript to the other part.

Dr. **Zell**. I would direct the Commission's attention to page 78. Our Commission analysis of Supreme Court decisions, treaties, and statutes. The course of dealings between the Federal Government and the Indian tribes reveals to us, or identifies to us, that the nature of the Federal Indian relationship guarantees the jurisdictional independence of the Indian tribes from the jurisdiction of State governments.

What we attempted here with the findings and recommendations is to establish the status of tribal governments within the Federal domestic assistance program delivery systems so that tribal governments will not come under State jurisdiction in the delivery of Federal domestic assistance programs.

It is of prime importance to the tribes that there be congressional recognition of the status of tribal governments within the Federal system, and a guarantee that the permanency of that status will be guaranteed by Congress.

If you will turn to page 80: Our examination of Federal domestic assistance programs authorizing legislation acts, and administrative regulation associated with those programs reveals that there are a variety of different ways in which tribal governments fit in the Federal domestic assistance program delivery system.

That is where programs require a State passthrough of moneys, State signoff or approval of the tribal plan and contract, State incorporation of a tribal enterprise in order to receive—for instance Small Business Administration—funds.

All of those are conditions which the tribal governments are coming under the jurisdiction of the States. Our analysis of the authorizing legislation leads to the conclusion that in many cases Congress was not focusing on the status of tribal government or perhaps was not even focusing on incorporating tribal governments within a program or an agency delivering services.

So what has happened is that tribal governments are treated very inconsistently, in a variety of different manners, in the delivery system of Federal domestic delivery programs.

So we ask that Congress should enact legislation to resolve the inconsistencies of Federal domestic assistance, legislative and administrative procedures as they define the status of tribal governments within the Federal domestic assistance programs delivery system.

The implementation of principles, which would result in such inconsistencies, should establish a clear definition of tribal government, eligibility for each Federal domestic assistance program, and guarantee the jurisdictional independence of tribal governments as permanent political entities within the Federal domestic assistance programs delivery system.

Second, in accordance with that principle, Congress should authorize the analysis of enabling legislation program acts and administrative regulations of Federal domestic assistance programs to determine tribal government eligibility.

In addition, and in accordance with the same principle, Congress should authorize the waiver of administrative regulations of Federal domestic assistance programs which condition eligibility on population formulas.

I am going to back up on this. Excuse me, this is a different concept.

In analyzing Federal domestic assistance programs we found that, particularly for tribal populations, a formula funding based on population works to the detriment of those with the greatest need. That is the 89 percent of the Indian tribes that are under 1,000 members.

In many instances that immediately disqualifies the tribe from eligibility for a program. For instance, some seeded programs say 1,000 people is the minimum population to be served, so that one automatically eliminates 89 percent of the tribes.

So, we would ask that the funding for Indian tribes, or the calculation of formulas, not be based on population and generally not work to the detriment of those with the greatest need.

Commissioner BORBRIDGE. Mr. Chairman, I have a question on that. How would one determine need? What is need in this context? I think that I know what you intend but the concern that I have is the uncertainty that results when the decision is left to the good graces of the bureaucrat who, with their usual creative innovative approach, would act exactly contrary to what would be beneficial to the tribe.

The less discretion that is vested in those places, I think, the better off the tribes are. It seems to me that you are almost arguing, or presenting, a viewpoint that there might be two categories of funding or, perhaps, within the funding too little self-funding. One which provides minimal assistance to tribes that are small, which would otherwise, on a population basis, receive insufficient amounts of assistance. The larger tribes might be dealt with on another basis.

We have discussed this before, and I still have grave reservations about leaving the definition of "need" to some bureaucrat.

Dr. ZELL. Perhaps a model to be considered might be in a method that was used for Public Law 93–638 funding under section 104 which provided moneys to tribal governments for tribal government capacity building in which the indications were based on population formulas, where the first 100 members would be $50 a head, and then decreasing as the population of the tribe increased.

In addition, under Public Law 93–638, section 104 moneys, there was a section entitled small tribes incentive programs in which small tribes could apply for that extra money. This was a good step on the part of the Bureau of Indian Affairs in recognizing that most population formulas do discriminate against those smaller tribes with the greatest need.

So I would suggest a procedure something like that, that was using Public Law 93-638. It would get around the definitional problem of need.

Commissioner **Borbridge.** Yes; I think that moves toward the "need" that I felt, and toward a more refined definition.

Chairman **Abourezk.** Any questions or comments?

Commissioner **Whitecrow.** Mr. Chairman, I have a question on recommendation No. 3. In regard to the word "determine"—I am trying to toy with this sentence: "Congress shall authorize the analysis of enabling legislation program acts and administrative regulations of the Federal domestic assistance programs to determine tribal government eligibility."

I would like to suggest a change from the word "determine" to insert the word "provide" tribal government eligibility. Would that change the context of this presentation to a great extent?

Dr. **Zell.** Well, the problem that many tribes experience is that their access to the Federal domestic assistance programs that are available to them is through their access to the Federal domestic assistance programs, which does not specify statutory barriers in the authorizing legislation of the Federal program, which would prevent the tribal government from participating.

So, what we are addressing here is the identification of statutory barriers to tribal government participation, such that a tribal government would be able to go through a catalog or whatever method the Federal Government uses, to put out information on the Federal programs, and know exactly where it stands in every instance as to their eligibility for applying for Federal grants.

Commissioner **Whitecrow.** I would like to reserve any comment on this recommendation to give a little further study to this.

Chairman **Abourezk.** Which one is that?

Commissioner **Whitecrow.** That is recommendation 3, that says Congress should authorize the analysis of enabling legislation.

We are having a little problem with this in working with the Federal domestic catalog. In many instances we find the tribal governments should be eligible for many of these Federal programs. In many cases they do without, and the way I understand this particular recommendation is that it is recommending that Congress authorize the analysis of enabling legislation to determine tribal government eligibility.

I would like to insert the word "provide" tribal government eligibility in place of "determine."

Chairman **Abourezk.** Do you want to offer an amendment?

Commissioner **Whitecrow.** I would like to offer that amendment.

Chairman **Abourezk.** Are you striking the word "determine" and replacing it with "provide"?

Commissioner **Whitecrow.** Right.

Chairman **Abourezk.** The question is on the amendment. All those in favor will raise their right hand. The vote is 6 to 0 in favor. The section is so amended.

Any other questions or comments? If not, the question is on the adoption of section B of the tribal government chapter.

Commissioner Borbridge. So moved.

Commissioner Bruce. May I ask a question? Are we all through?

Chairman Abourezk. Is there another section?

Dr. Zell. We have just gone through two-thirds.

Chairman Abourezk. You are not done with section B yet? I am sorry.

Mr. Taylor. Mr. Chairman, I think we are ready for a vote on this portion of section B.

Chairman Abourezk. Let's get all through section B and then——

Dr. Zell. On page 81, "Congress should amend the Intergovernmental Cooperation Act of 1968 to include tribal governments in the scope of intergovernmental activities and access to Federal program information provided under the act."

This act allows for State and local governments to have access to all Federal program planning, administrative procedures, consultation on tax laws, and competitive fiscal standing between units of government which we feel, in order to further establish the status of tribal governments in the Federal domestic assistance programs delivery system, that it is logically consistent with tribal governments being included as eligible for the services provided under the Intergovernmental Cooperation Act.

And the last recommendation, "Congress shall amend the Law Enforcement Assistance Administration Act to remove the State jurisdiction over tribal governments, and the service delivery system of Law Enforcement Assistance Administration programs, thereby allowing the programs and moneys to flow directly to the tribal government."

Commissioner Bruce. Rather than through the States?

Chairman Abourezk. Rather than through the States—the money would go directly to the tribal government.

Dr. Zell. The third section begins on page 83——

Commissioner Bruce. Will you go back to page 80? Maybe I wasn't listening, but that last paragraph is very important, and it has something to do with intertribal affiliation. It should not force tribal governments to form consortiums for intertribal federations in order to become eligible.

Dr. Zell. The main condition for this situation, most often, is the lack of a sufficient population base to apply for a Federal program, thus the tribes must join together to establish a population base large enough to become eligible for application.

It is another governmental unit conditioning the alliance between units of tribal government, which we feel is in conflict with the inherent sovereignty of the tribal government to determine whom it shall affiliate with and what units of tribal government it will ally with in order to be eligible for funding and this condition should be removed.

Commissioner Bruce. State Indian commissions are eligible for the programs, correct?

Dr. Zell. State Indian?

Commissioner Bruce. Like CETA programs, they can apply and be sponsored. Is that correct?

Dr. ZELL. Yes.

Commissioner WHITECROW. That would not be knocking out Indian commissions from becoming——

Dr. ZELL. The authorizing legislation for each agency or program establishes different criteria for eligibility. So, conceivably, in the 1,030 Federal domestic assistance programs there could be 1,030 different conditions of eligibility. So you have to examine it statute by statute, and regulation by regulation, or program by program.

Commissioner WHITECROW. What we see then, here, is not the curtailment of these kinds of organizations, but rather a voluntary coalition by tribes, based upon their inherent soverignty.

Dr. ZELL. That is correct.

Commissioner BRUCE. What was that again, Jake?

Commissioner WHITECROW. What we see here is not a condition whereby it prohibits intertribal councils from performing, but it provides for a voluntary coaliation of tribes to form into these intertribal councils, and coalitions to get the population base to bring in a Federal domestic program.

Am I following you correctly now, Pat, we are not prohibiting this type——

Dr. ZELL. That is correct, Commissioner.

Commissioner BRUCE. Are you a prime sponsor, Jake, as an intertribal group?

Commissioner WHITECROW. For some programs, yes.

Commissioner BORBRIDGE. Mr. Chairman, as a matter of clarification, if a program is developed, appropriations made, and there appear to be realistic comments so that smaller tribes on their own would not appear to be ready to receive enough funds to make a significant possibility for them so they could administer a program, they can simply choose to bypass the program.

At least they are not permanently required to associate themselves or aline themselves with other tribal governments.

On the other hand all you are saying is this is not prohibited. You touched on this, but explain how this differs. It seems there is just a subtle distinction. All you are saying is you don't want the forming of an intertribal alliance to be a requirement for benefiting from some programs.

The result might be the same but you just want to be sure that it is not set in there as a precondition attached to any legislation. Is that basically right?

Dr. ZELL. Yes; that is basically right.

Commissioner BORBRIDGE. Thank you.

Dr. ZELL. The last part of this section is on page 83. If I may read the finding, many tribes do not have the financial resources necessary to afford the basic operations of tribal government.

In addition many tribes do not have the financial resources necessary to engage in costly litigation to protect tribal trusts, lands, and resources, and to defend the exercise of their sovereign powers.

If you will recall: That last finding was dealt with extensively in the trust chapter, as part of the justification for the establishment of a trust council authority.

Chairman ABOUREZK. Once again, Pat, if I might comment on these recommendations. I don't really see much of anything for Congress to act on, as far as these recommendations are concerned. They don't follow the form which the Commission should have for recommendations by the staff.

In fact, I don't think we can act on these recommendations, they just don't mean much to us.

Mr. **Taylor**. Mr. Chairman, if I might respond to that. The findings that immediately precede this, which are very concise—they are less than a page and a half—I think clearly show or will demonstrate what is being sought here. It is possible we could tighten this up in the editing process, but when the two are read together these recommendations are accomplishing quite a great deal.

Chairman **Abourezk**. Well, but they are not, I don't care if you read them with everything else. The agreement with the staff was that recommendations ought to be concise in themselves, so that when the Members of Congress pick this up and read it they have something they can just grab right onto and they can say to themselves, all right, here is what we have to do.

But to read this, "Congress should provide that in both administrative and judicial proceedings, the Indian will be assured competent, independent counsel." Well, that is a very nice statement but what do we do about it.

That means then that Congress has to sit down and figure out how to get to this point, and what the Commission should be doing is figuring it out for Congress. That is why I consistently ask for real definite recommendations.

Mr. **Taylor**. What page are you reading from?

Chairman **Abourezk**. I am reading from page 83. Isn't that where we are at?

Commissioner **Borbridge**. Mr. Chairman, I consider those more subjective than the actual point of the recommendation. I am told some of them are subjective.

Chairman **Abourezk**. I don't have any arguments with this as subjective, but I am just saying as a matter of form and style.

What you are doing is consistently not following what we had agreed upon so far as form and style is concerned. I don't have any arguments with the substance of it at all.

Mr. **Taylor**. Mr. Chairman, there are certain problems in specificity here. For example, if I could go back to page 80, which was the second recommendation, "the Congress should enact legislation to resolve the inconsistencies of Federal domestic assistance legislative and administrative procedures."

The next recommendation is calling for a study to identify where those inconsistencies lie. This is the entire Federal domestic assistance program. There was a contract study done at the University of New Mexico in Albuquerque and after a full year under that contract they still weren't able to come up with a finding of exactly what those statutes are.

So what we are asking for is a study to identify those, and then asking Congress to make the necessary legislative corrections.

Chairman **Abourezk**. That I can understand; that is easy to understand. But what is wrong with saying on page 83, the first recommendation, "Congress shall appropriate adequate money to support the basic operations of tribal governments."

It seems to me it is a very simple change. But what I am saying, I don't think it is up to the Commission to make these changes every time you hand us a recommendation. I think the staff ought to do that before you bring it to us.

Mr. **Taylor**. With respect to page 83, that is really a summary of the major finding and I think to get to the specific on it we would have to move further back.

Dr. **Zell**. Move to page 90.

Chairman **Abourezk**. All I am looking at is a recommendation.

Mr. **Taylor**. It says summary. Frankly, the format is a little difficult to work with—to start each section with the summary of recommendations, and then wind up with what the recommendations really are.

Chairman **Abourezk**. I think you ought to start out with a recommendation and not with the summary.

Mr. **Taylor**. That may be a wise editorial change.

Chairman **Abourezk**. I really hate to keep harping on this, but I really don't know how to say it any differently than to repeat it each time one of these comes up, and that is: At the beginning of every chapter where you have recommendations, it ought to be set out very clearly either what Congress or the administration must do with the recommendation of the American Indian Policy Review Commission.

We have talked about it at least 832 times, at a minimum, and everybody has agreed upon it, yet we keep getting recommendations like this every time you hand us a draft.

Mr. **Taylor**. Through our editing process we will attempt to tighten that up.

Chairman **Abourezk**. I hope you do because I have to say that I, personally, just as one vote on this Commission, will vote to reject anything that doesn't come in that form. I would hope the other Commission members would join me. It is going to make the report worthless if we don't have it readable by the time it is finished.

Do the other Commission members disagree with that?

Commissioner **Whitecrow**. I concur.

Commissioner **Deer**. I concur.

Commissioner **Bruce**. I agree.

Chairman **Abourezk**. I suggest that the weight of the Commission is upon the shoulders of the staff. Now, really, I don't want to sound hard line about it, but to me it is very, very important, and I can't emphasize it enough.

Commissioner **Bruce**. I would like to say that the inherent overview is excellent. I think it is a very important point here, and I think he is right in saying that we want it to be well organized.

Mr. **Taylor**. I think the solution may well lie in connecting the specific finding with the specific recommendation so that, then, the language that is being presented here has meaning within the context of what the finding is we are trying to correct.

I believe there is a problem here. I understand your concern and I think we can tighten it up without too much of a problem.

Chairman **Abourezk**. Before the next meeting I would ask the staff to go over everything you are going to present to us, that you have it in the form we have agreed upon, and if you don't we are just going to reject it each time you bring it up.

I think there is general agreement amongst the Commissioners on the form it ought to be in. So, will you make that amendment on page 83 to simply say Congress should appropriate adequate money to run the basic operations of tribal government.

And then the second part—well, I don't know how you would get to that. You may have to show us a bit more to make sure that the Indians are assured competent and independent counsel in administrative proceedings. Tell us how to get there.

Mr. **Taylor.** I will wait for the presentation of this section. I know that the trust chapter does deal with this to some extent, but there may be more specific recommendations.

Chairman **Abourezk.** I would like to say that I don't think we ought to accept that second recommendation. You have got the amendment on the first one, right?

Mr. **Taylor.** Yes.

Chairman **Abourezk.** On the second one, I don't think we have to accept it, unless you are more specific with what wo ought to do. Will you be more specific on your position to appoint legal counsel for Indians? You know, what is it we need to do? That is what I am asking. So can you give us different language on that?

Mr. **Taylor.** Yes, sir.

Chairman **Abourezk.** Go to the next section then.

Dr. **Zell.** On page 90, the two recommendations which comprise this section, "Congress should direct the Bureau of Indian Affairs to undertake a needs assessment of each tribal government to determine tribal capability to finance the basic operations of tribal government." With the request that Congress recognize that many tribes do not have the financial resources necessary to support the basic operations of tribal government.

And, finally, "Congress shall authorize the evaluation of the administrative regulations of the self-determination grants program, and shall authorize the revision of regulations where such regulations narrow the scope of congressional intent articulated in the Indian Self-Determination and Educational Assistance Act."

This recommendation is addressed in the narrative and will be expanded upon in the Federal administration chapter. That completes section B of tribal government.

Congressman **Young.** Congress shall authorize the revision of regulations. We already have that regulation for authorization, do we not?

Mr. **Taylor.** Mr. Commissioner, I think the agencies do under the act that the statute was enacted. I think that "authorized" should be changed to say, "and should require the revision of reguations."

Congressman **Young.** I so move.

Commissioner **Deer.** You have heard the motion that Mr. Young has made, is there a second?

Commissioner **Bruce.** Seconded.

Commissioner **Deer.** Further discussion?

Commissioner **Whitecrow.** I would like to offer some discussion on the change. Strike out "should" just prior to the word "require". I think that would make it a little stronger.

That would then read: "and require the revision of regulations."

Commissioner **Deer.** All those in favor raise your right hand.

Mr. Martone. Madame Commissioner, is it still open for discussion on this portion of it, because I do have a comment I would like to make.

Commissioner Deer. Well, we were in the middle of the vote. Let us finish our vote. Opposed?

OK, it has passed.

What is your comment?

Mr. Martone. As you probably know, I see the major weakness in this entire report as a lack of objectivity——

Commissioner Bruce. What was that?

Mr. Martone. Objectivity. There are lively legal controversies on all these issues, and there are good arguments on both sides. Of course, it is the prerogative of this Commission to recommend how those controversies ought to be resolved as a matter of policy. That, it seems to me, is not being done here. All the issues are not treated as issues, they are treated as settled issues of law.

Not only that, it is compounded by rather fast and loose treatment of certain cases. To give you a specific instance of that I refer you to page 84 of this report which cites the case of the *United States* v. *Mazurie*, a 1975 Supreme Court case, for the proposition that the Supreme Court affirmed inherent powers of Indian tribes and upheld the tribe's right to exercise these powers.

That is not what *United States* v. *Mazurie* held. *United States* v. *Mazurie* held that the Congress had the power to delegate its power to an Indian tribe, and the court specifically refrained from ruling on the question of whether or not an Indian tribe has the independent power to do it in the absence of a congressional delegation.

Commissioner Borbridge. Just a point of inquiry. I understand, Mr. Martone, that what you are giving us is your interpretation of what you consider the ruling to be, as I perceive your comments. I sense you are concerned about objectivity, and as you present your views I must confess I, too, become more concerned about objectivity. But I do want to make it quite clear that I consider your comments as one viewpoint, and an interpretation that you consider to be, let's say, somewhat objective. I think within that light we may continue.

Mr. Martone. Thank you, Mr. Commissioner.

To adequately lay a foundation of my own objectivity I will read from *United States* v. *Mazurie.* The court says "we need not decide whether this independent authority is itself sufficient for the tribe to impose its ordinance number 26."

That question was specifically reserved by the court. I think the lawyers on this staff will agree with me on this question.

Mr. Taylor. The court went on to reply to the 10th circuit, and I agree it was dicta, but it was a reply to the dicta of the 10th Circuit. Does it not say that it would appear they do have their own inherent power?

Mr. Martone. It does not say that, and I hand you my copy of *Mazurie.*

Mr. Wilkinson. If I might just read from this, Madame Chairperson, the earlier cases in the court here is referring to *Worcester*, but I am reading from *Mazurie.* The earlier cases, in addition, make clear that when Congress delegated its authority to control the introduction of alcoholic beverages in Indian country, it did so to entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life, and I think that the court expressly said that Indian tribes had independent authority.

Mr. **Alexander**. If there are no more questions on this point I would like to move back to section A of the tribal government chapter.

Mr. **Taylor**. Have we had our vote on this?

Mr. **Alexander**. Yes; we have had our vote on this.

Mr. **Taylor**. I would like to make one comment before we do that, Paul.

The point that Fred Martone has raised here is a question of illegal status of tribal government. This entire section is dealing not with whether or not they are sovereign entities particularly. No one disagreed that they are a governmental entity.

Whether or not they are sovereign or federally created, which is the argument we are moving into, that no matter how you conceive tribal government for the purposes of that part we have discussed here and passed on, the point that Fred is raising is irrelevant.

Move over to the tribal government and the exercise of its powers, then I think it is a relevant issue.

Mr. **Alexander**. Which is why I suggest we move to section A.

Mr. **Martone**. I think, as a matter of administrative convenience, you can make that allegation, but it is not fair to say it is irrelevant, when those statements of law are stated on pages 84 and 88 over and over again. So, it arises in this section, for purposes of convenience, in terms of your presenting your report to this Commission. That is fine. But I think it is not fair to say it is irrelevant if it arises out of the text of this discussion.

Mr. **Taylor**. I think the record stands.

Commissioner **Deer**. Let's proceed. What page are we on?

Mr. **Taylor**. We are on page 1 of tribal government.

I would first like to call attention to the table of contents for this chapter on tribal government. What we are dealing with here is part A, which is legal status. Generally, we have broken it into four different sections first of which is entitled historical overview and jurisdiction generally.

This section is a review of the Federal Indian relationship by governmental level and the legal cases, the policies that were pursued, et cetera, leading us to the present posture of Indian tribes as governments, and in certain jurisdictional facets of disputes that are presently arising in tribes and States—questions of jurisdiction for non-Indians.

The second portion of this part A is an examination of the sources of tribal power. In some measure it is slightly redundant to the historical overview, but it is treated, I think, as a very short function.

I believe it is necessary in order to examine some of the questions that have arisen in our prior hearings. The third section is entitled political relationships in the Indian Reorganization Act.

Essentially, what this section will deal with is the relationship of the Secretary of the Interior and the Commissioner of Indian Affairs to Indian tribal governments, environment, and political processes of Indian tribes, and the secretarial power to approve or disapprove tribal ordinances.

The need is to expand certain basic provisions of the Indian Reorganization Act, such as land acquisition, to what is now presently considered to be under that act. And then the fourth section deals with amendments that the staff believes would be under the 1968 Civil Rights Act, and the matter of according full faith and credit. We will then deal first with historical overview and jurisdiction generally.

I ask that we turn to page 1, which is our summary of findings and recommendations. The basic finding here, and it flows out of the principles which we originally discussed. The principles are in the introduction portion of this chapter.

The leadoff sentence is that:

> It is the conclusion of this Commission that Federal policy toward tribal government should be directed toward affirming and encouraging the development of tribal governments into strong, viable, permanent, governmental institutions.

That is a key conclusion that this Commission has to make a recommendation on. We continue.

> Recitation of the litigation presently surrounding the jurisdictional conflicts between States and tribes may suggest the desirability of a legislative solution. But it is the consensus of this Commission that any attempt to impose a broad legislative solution at this time would be ill-advised an premature.
>
> The Commission finds that the growth and development of tribal government into fully functioning governments necessarily encompasses the exercise of tribal jurisdiction over non-Indian people and property within reservation boundaries.
>
> The tribes must accept the fact and operate under the assumption that the jurisdiction they assert over non-Indians must bear a reasonable relationship to legitimate tribal interests such as protection of trust resources, maintenance of law and order, delivery of services, and protection of tribal government generally.

This sentence that I have just read is an attempt to provide some guidelines to tribes in certain jurisdictions, particularly on reservations that have a large non-Indian population or a large percentage of non-Indian-owned land.

It evolves out of the prior three or four hearings that we have had. They are very complex issues that are presented to tribal governments and to this Commission today.

Within this context we make four summary findings here.

Chairman ABOUREZK. What page?

Mr. TAYLOR. Page 1, right behind the table of contents.

> Within this context the Commission endorses the following principles as the basis for the Federal-tribal-State relationship.
>
> Federal policy concerning tribal sovereignty must be premised on an assumption that when confronted with options the Indian people will act intelligently, responsibly, and fairly when exercising powers of self-government. The suspicion and resentment which presently characterize the relations between tribes and States must be eliminated within the context of respect and acceptance of the institutions of tribal government and Federal laws must be designed to foster this result.
>
> The tribes must accept the fact that with the increased power and responsibility of tribal governments, some Federal review authority will be imposed.

I think we have amended that language slightly in the version that you have before you.

> The Federal policy must accept the position that the supervisory authority it asserts must be limited and flexible.

Mr. Alexander. That language now reads that it is a fact that with the increased exercise of power and responsibility by tribal governments, some Federal review authority will be retained. The Federal policy must accept the position that the supervisory authority it asserts must be limited and flexible.

This authority is now encompassed in title II of the 1968 Civil Rights Act, otherwise known as the Indian Civil Rights Act.

Mr. Taylor. The third major element here is:

> The ultimate objective of Federal-Indian policy must be directed toward aiding the tribes in achievement of fully functioning governments exercising primary governmental authority within the boundaries of their respective reservations. This authority would include the power to adjudicate civil and criminal matters, to regulate land use, to regulate natural resources such as fish and game and water rights, to issue business licenses, to impose taxes—

And I might say also to offer tax exemptions to attract enterprises into the reservation—

> and to do any and all of those things which all local governments within the United States are presently doing.

Each of these three must be read together. We are cautioning tribes on the necessity that the jurisdiction they assert must have relationship to the legitimate interests of the tribe.

We are trying to set a Federal policy here that is assuring the permanency of Indian tribes, and lay down our ultimate conclusion that we are not asking for legislation in this jurisdictional area, but we are trying to set a policy guideline that will shape legislation in the future.

Chairman Abourezk. So we don't have anything more to discuss in this area then, is that right, is that the understanding?

Mr. Taylor. One moment, sir.

Mr. Chairman, again, this is a summary of specific findings that would come at the end of this section, which would be on page 22 through 29. They are findings arising out of our review of the history of the Federal-Indian relationships.

I think, really, we have discussed all of this in our prior meetings, and I frankly would feel that we would be prepared for a vote or an adoption of this basic policy that we just laid out.

Chairman Abourezk. Once again I get back to page 28. When you say recommendations you repeat findings again.

Mr. Taylor. Yes; that was pointed out last night, and we will change that. In fact we concluded, Mr. Chairman, that in fact the only two recommendations that actually appear on 28 and 29——

Chairman Abourezk. Which ones are those?

Mr. Taylor. The last paragraph on page 28, there is a brief statement of the policy which I have just read. That last paragraph on page 29 is a recommendation that there be no legislative action at this time.

Those are really the only two recommendations.

Chairman Abourezk. Can you clean that one up, at the bottom of page 28? Give us a better idea of how to accomplish that.

Mr. Taylor. OK, in essence it should be a restatement of essentially the policy that is laid out in the summary, and we can make that clear.

Chairman Abourezk. All right. Subject to that stylistic change, are you ready to have section A, legal status, adopted?

Mr. TAYLOR. Yes, sir.

Chairman ABOUREZK. Is there a motion?

Commissioner WHITECROW. So moved.

Commissioner BRUCE. Seconded.

Chairman ABOUREZK. All in favor of adopting section A raise their right hand. The vote is 7 to 0 in favor of adopting. The section is adopted. What about section B?

Mr. TAYLOR. At this point we move to section A2, which is a discussion of the legal status generally, that is on page 29A.

Chairman ABOUREZK. Have you finished section B?

Mr. TAYLOR. Yes.

Chairman ABOUREZK. Have we adopted it? I was out of the room.

Mr. TAYLOR. Yes, sir.

Commissioner WHITECROW. I don't believe we did.

Chairman ABOUREZK. Did we vote on adopting it? We voted on the amendment, that is all.

All right, is there a motion to adopt section B?

Commissioner DIAL. I make such a motion.

Chairman ABOUREZK. Is there a second?

Commissioner WHITECROW. Seconded.

Chairman ABOUREZK. Motion made and seconded. All those in favor of adopting section B raise their right hand. The vote is seven to nothing in favor of adopting.

All right, now you want to go where?

Mr. TAYLOR. Section A2, which is titled cases of tribal power, and it starts on page 29A.

I apologize to the Commission; this section, necessarily is rather technically legal. I think it has to be in here in view of the discussions that we had in the past on the question of whether or not tribes are sovereign, exactly what their status is, and where the source of power flows from.

It has to be set forth by this Commission. This section reviews the case law including *U.S.* v. *Mazurie* and numerous other cases. It finds that the primary and most important source of tribal power flows from its inherent sovereignty, which has always been recognized by the United States.

I suspect that this will be open to some question. The second source of power, and one which has always been recognized, is the power of the landowner to restrict nonmembers of the tribe from entering onto a reservation.

This power, obviously, was severely eroded during the allotment era, and not by the choice of the tribes, but the power to eject on reservations is a well-recognized power. In fact it was recognized first in 1821, and it was the principal source that Interior relied on as of 1934, as to what they considered the powers of tribes to be, and the source from which it sprang.

As the assertion of the sovereign powers of tribes increases the importance of the land ownership power diminishes.

Mr. ALEXANDER. One clarification for the record. We mentioned in the presentation that the chapters promised on the basis of inherent sovereignty, there was a statement that may be open to some question.

It is the staff's position that it is not open to question, that is the legal position that we take.

Chairman **Abourezk.** Exactly what is not open to question, Paul?

Mr. **Alexander.** The jurisdiction that we are referring to is based on inherent sovereignty. There was a comment that it was open to some question. We are referring to not our own view as attorneys, it is the uniform position of Charlie, Peter, and myself, that that is established law, we will stand behind it.

I want the record to clearly reflect that, and not later be misinterpreted.

Mr. **Martone.** I think the record should reflect there is a respectable body of contrary opinion, which would view American Indian tribal self-government to be not based on any inherent power, and that question having been foreclosed by the 10th amendment to the U.S. Constitution, the *United States* v. *Kagama* and *McClanahan* v. *Arizona State Tax Commission.*

As I have said, previously, I think the statement that that question is no longer open to discussion, which appears in the text on page 32 gives you some idea of the flavor of the one-sided advocacy represented by this report, and its opinion.

It is a rare form of truth-seeking process that decides that first principles are no longer open to discussion. Those first principles are now the source of lively controversy in all branches of this Government, and in litigation all over this country and, at the appropriate time, I will argue the contrary position to that espoused by staff counsel.

Chairman **Abourezk.** I would say on the question of whether or not anything is open to discussion—everything is open to discussion. But at some point in time the Commission has to make a decision where they stand, and without regard to whether the staff is either advocating one way or the other, the Commission has to make a final determination in any event.

So I think the terms open or closed or whatever, don't even apply to us. When we make the decision, obviously the discussion will still go on, and the decision will remain.

Commissioner **Borbridge.** If I might comment further, Mr. Chairman, I not only concur with that but I feel that staff is providing us with what we consider to be the facts and the findings as to their interpretation of various judicial decisions.

That doesn't remotely begin to encompass the entire tasks with which this Commission must deal, but rather those facts and recommendations or findings largely form the basis for the recommendations which this Commission will make.

It may well be that in some areas the conclusion may be reached, at least by a majority, that the legal decisions with respect to a policy that the Commission is considering, are favorable.

In another circumstance I could envision that perhaps there may be some question as to where the cases may come down and whether or not they match our recommendations. Again, the Commission is in a position to consider that. It is seeking to define for its own satisfaction the full spectrum of the trust relationship between the Indian tribes and the Federal Government.

The responsibility of the Commission, as I envision it, is one that encompasses an overview, thus the comments of the specialists in those areas are very important. But they really only comprise one aspect of that which the Commission considers. Thank you.

Mr. Taylor. The third section of part A2——

Chairman Abourezk. What page?

Mr. Taylor. Page 38A. This deals with a question that has arisen very recently, the fact that there did not appear to be a problem in Federal Indian law until 1956, in the case of *Colliflower* v. *Garland.* It is a question of whether or not a tribe is a Federal instrumentality or exactly what is meant by that language.

There is a body of case law coming out of the ninth circuit, particularly in criminal matters dealing with double jeopardy, that is precluding subsequent Federal prosecution of persons convicted in tribal court on the grounds that it constitutes double jeopardy—that the prior trial and tribal court are subsequent prosecution on the grounds of double jeopardy.

The theory being that a tribal court is the arm of the same sovereign as the Federal Government. It creates many, many constitutional problems, so this is a discussion of the Federal instrumentality concept.

Nothing in prior case law dealing with taxation has recognized tribes as instruments through which the Federal Government has chosen to carry out Federal-Indian policies as opposed to the reverse concept that tribes are somehow or other being a creature established by Federal law and therefore an arm of the Federal sovereign.

What we are asking the Commission here to do, and this would be back to page 29A, is simply make a finding that to the extent—well, I would say that would be the third paragraph on page 29A, and I believe that we agreed to reverse the order of the sentences in this paragraph so that it would read that tribes are Federal instrumentalities only in the sense that the Federal Government has recognized the tribes as domestic dependent sovereigns and has chosen to carry out its Indian policy through those recognized governments.

The power of Indian tribes does not spring from any grant of authority from the Federal Government to the tribes. That first sentence, I think, could just be struck out of there.

In a sense what we are trying to achieve here is first an impression of concern over the issue. It does not require any legislation whatever. I think caution is needed, though, to attorneys, to the courts, to consider the ramifications of this thing when it gets tied into this Federal instrumentality concept.

I think this expression of concern would at least alert people to consider where this is going to lead the Federal-Indian relations. So, I think, we could just adopt those findings and recommendations. Actually it is not a recommendation, it is findings on page 29A.

That would satisfy what we are asking for in section A2.

Chairman Abourezk. Any questions or comments?

Mr. Martone. Yes. The Commission may want to adopt those findings, but it ought to realize it is rejecting the case which Pete has relied on, *United States* v. *Wheeler* in the ninth circuit, holding tribal courts and Federal courts emanate from the same sovereign; that is, the United States.

That case wasn't just an aberration. It relied on the U.S. Supreme Court, in *United States* v. *Kagama.* At 545 F. 2d at 1257 the 9th circuit relies on *Kagama* and quotes it saying—this is the U.S. Supreme Court—"there are only two sovereign entities within the United States, the Federal Government and the States. Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the government of the United States, or under the States of the union. There exists within the broad domain of sovereignty, but these two."

That quote is from 118 U.S. at 379. So, to the extent that you adopt those recommendations, you should understand that you are rejecting, at least, the political doctrine espoused by the U.S. Supreme Court.

Commissioner WHITECROW. Mr. Chairman, I don't believe this Commission at any time has ever made any recognition that the tribes do have external kinds of sovereignty. I think we have recognized, up to this point, that we do have, as tribes, internal powers of sovereignty, and those internal powers of sovereignty are still there, so long as they have not been expressly removed by Congress.

As such I can't say that that particular argument has any reference to this particular position whereby we are recommending recognition by the Congress that tribes are domestic independent nations, and as such they do have inherent powers of internal sovereignty.

Mr. TAYLOR. I would just like to make a short reply to Fred's comment. What he has just referred to is the *Wheeler* case out of the ninth circuit. The reason we have put this section in here is because it is important to know in addition that there is a split opinion between the ninth circuit and the eighth circuit, and that is what we discussed in this portion.

This case has not been decided by the Supreme Court. I don't know whether it is going to the Supreme Court this time around. Ultimately, this question will be there.

The lawyers need to be aware, and Congress needs to be aware, of the ramifications of its Federal instrumentality concept. The eighth circuit is in disagreement with the ninth circuit on this question.

Commissioner DEER. Mr. Chairman, there are a number of comments that I have in listening to Mr. Martone, and also being aware of the article. I think it is rather obvious that we do have disagreements on certain fundamental points that deal with trust, tribal sovereignty, and tribal government.

We, as Indian people, have our knowledge, our perceptions, our attorneys, and the Commission has this. We comment about objectivity, and I find it quite interesting. So I feel the first time in the history of this country we have Indian people sitting on a congressional commission alongside Congressmen and Senators, with an equal point of view.

I feel that with the Indian input we have the opportunity to bring about the objectivity that Mr. Martone has been talking about. I think that if we all examine the various documents, policies, and cases, there has been a lack of Indian involvement.

I feel with the involvement of Indian people we will work toward objectivity. It is true that there are different interpretations to legal opinions, and to the Indian peoples, and I again would like to express my opinion.

I think there is an instruction of law that states that the law should be interpreted in favor of Indians, and I would characterize Mr. Martone's position as being at the extreme end of this—construing interpretations of canons and opinions against Indians.

I want this to be reflected in the record: That I would characterize his approach as being a terminationist, and having had a lot of experience with that on my tribe I think this is again something that we, as Commission members, should be aware of. That this particular philosophy is being espoused and it is being the subject of Presidential messages and also by the Menominee Reservation Act.

Commissioner BRUCE. I concur with what Commissioner Deer had to say. Mr. Chairman, somewhere down the line, and maybe it ought to be done now, I would really like to hear from our own attorneys. Perhaps Charlie, will give us his interpretation of this article because it hasn't been on the record and we need to take a look at it.

We don't agree with some of it, after all, we are not lawyers. I think restoration has been extremely fair—this Commission has been extremely fair in dealing with people, giving them a chance to participate. We are not here on the defensive. That is why the wording that you prepared, I sometimes feel, is not strong enough.

Chairman ABOUREZK. Adolph, I will recognize you in just a second. Under the time restraints we are under, I would ask if you would withdraw that request. It would be very interesting, I think, but we are not going to have time to do it and get through with our work.

Commissioner BRUCE. How long would it take? Can you give us a 3-minute presentation?

Mr. ALEXANDER. We are within a half-hour ahead of schedule.

Chairman ABOUREZK. I understand the feelings of the Indian commissioners about the dissenting views of Fred Martone, and Congressman Meeds. I think they serve very valuable functions, I really do, and I would honestly hate to see a direct attack on Mr. Martone, or on his views.

I think we can discuss the issues and come to a vote in that manner. It just seems to me that I would say Mr. Martone overstepped just a little bit when he said this was a one-sided commission. But if we decided everything that he wanted, it would still be a one-sided commission. I still think that we have to give Mr. Martone or anyone else who wants to dissent total full range to dissent. This is absolutely what it is all about, and we can discuss each issue as it comes up and make a decision on it.

I would hope the decision would not make it necessary to make a direct atack on Mr. Martone's views as expressed in his article or how he expresses them here. We can take up the issues as they come up and decide those issues.

Commissioner DIAL. I was going to say that I feel it is necessary to have Mr. Martone's views expressed here. If Mr. Martone believes in assimilation then I believe that is Mr. Martone's right to support such a policy.

I am not saying that he does or that he doesn't. Some people from reading his article say he supports assimilation or termination. He has a right to support a policy of assimilation and termination.

I do not support that policy, but he has that right, and I feel that he should be given adequate time to express his views and say what he wants to say. I would like to hear some time before the day is over, in a few minutes, expressed by Mr. Martone, what he believes, and what his philosophy is. And also what the others believe it to be. I think this would be good, if there is no objection.

Commissioner **Borbridge.** Mr. Chairman, I certainly concur with your comments, that we do need the benefit of hearing as wide a diversity of views as may be available or are held by various individuals or groups because certainly, as we seek legislative enactment, we are going to encounter various views and it is helpful to have them available to us at this time.

I would only join you in objecting to any characterization on Mr. Martone or anyone else, of either staff efforts or efforts of the Commission as perhaps lacking objectvity, or being characterized as that of Indian advocacy, although I must say that if I were to be painted with the brush of Indian advocacy I would stand very proudly, and be glad to be painted with that brush.

I do feel, Mr. Chairman, that I can appreciate the various views that are presented. I would hope that all attorneys, or all staff people, having views similar or different would express themselves at an appropriate and timely point, rather than to wait until later on in the proceedings.

There is ample opportunity for everyone, as we proceed, to express themselves, either concurring or disagreeing, whenever presumed findings or recommendations are considered.

So I consider the proceedings have always been open. They have always been available for anyone to address themselves to pertinent issues.

Chairman **Abourezk.** To say it further, John, than what you are saying: The Commission was pretty carefully drawn with a cross-section of the Indian community nationwide, and was drawn from a fairly good cross-section of congressional leaders.

Everyone has the right to one vote, and at the end of this Commission's life, when we have the report, and the votes are reported, and the majority views are set down, and the minority views are specifically brought out and expressed and are reported, that I think the perspective of the Commission will be well established. People will have the right to look at both the majority and minority views and decide what is right and what is wrong.

I think the report will be an expression of this Commission, and will be characterized as one-sided.

In any political deliberation—that is exactly what this is, a political deliberation—when you finally come down to the decision of what you are going to do, you can adequately characterize the position as being one-sided. You have got to come down on the side of something.

There has been a great many compromises made in this report. It doesn't go as far as a lot of people would like to see it. In other cases it goes further than some people would like to see it, but nevertheless there are compromises made. In that respect it is not totally one-sided at all.

Congressman Young. The recommendations that we find in this Commission will be acted upon by the Congress and we are hoping that that will be the time—whether the recommendations are beat or whether they will uphold the merits of the recommendations of the Commission—when everybody has another shot at it, and I think that should be recognized.

Chairman Abourezk. There is enough of a political and factual basis that they probably will succeed. I just want to reiterate that dissent is expressed on various issues and I think it is extremely valuable to the Commission. I hope it will continue—I really do.

Commissioner Bruce. Mr. Chairman. I don't disagree with you. As a matter of fact, I have lived with his papers more than any of my other papers, and studied them very carefully.

What he has to say is in the record, but it concerns me, for that is one reaction that we do not get from the people we have been working with.

Chairman Abourezk. Do we have to adopt this section A2?

Mr. Taylor. Yes, sir.

Chairman Abourezk. Have we concluded that?

Mr. Taylor. Yes; we need a vote to adopt the findings.

Chairman Abourezk. Any discussion or comment on sectio

Commissioner Bruce. I move it be adopted.

Chairman Abourezk. There is a motion to adopt section A All those in favor raise your right hand, please. The vote is 7 to 0 in favor of adopting the section and the section is adopted.

Now, for the other sections do you want to take them now or wait until after lunch?

Patty just told me we can't get anyone in the cafeteria after 12:30, so we should break for lunch before 12:30. How long will it take to dissect Fred's article?

Mr. Wilkinson. Commissioner Bruce spoke to me at some length about this last night, and I have prepared a short statement on it, Mr. Chairman, that I don't think would take more than 10 minutes.

Chairman Abourezk. All right, will you permit me to duck out because I have a 12 o'clock appointment. Go ahead.

Mr. Wilkinson. If I might say, Senator Abourezk, I was deeply, and so was Commissioner Bruce, concerned about exactly the point you raised, and it is my intent to analyze an article and not to get into personalities. I honestly share your view that participation by Congressman Meeds and Mr. Martone has been of great benefit to this Commission.

I think of Mr. Martone as a colleague and a fine lawyer. My job is to analyze an article and not to attack any person. I understand the Native American Rights Fund is going to make a critique of this article, and they, I am sure, will go into it in much more detail than I will. I have several questions about the article. I will mention only a few, which I think are indicative of some of the issues that run through it.

Like a lot of Law Review articles you can divide this into two different parts: the legal interpretation and the statement of policy. I think I will mention first of all some of the legal conclusions, and then the article's recommendations as a policy. I have to say I think this is a situation where the two become a bit combined. I think it is a point of view of this article is evident from some of the legal interpretations that are made, and I think to a very substantial degree.

First, the article mentions page 613. Now, this statement about Felix Cohen's work. Cohen conceded that conquest rendered a tribe subject to the legislative power of the United States and as such this terminates the external powers of sovereignty of the tribe.

This is a theme that runs throughout the article. Essentially, that plenary power eliminates inherent tribal sovereignty, and this is an article that comes out against inherent tribal sovereignty.

The findings of the staff here are supported clearly by case law. I think this is terribly important. The tribes have powers of governments, and those powers are not given by the United States, and can exist with plenary power.

Just because the United States has brought power over Indian tribes, doesn't mean that those tribes don't have inherent powers. It is a major theme of the article—that tribes do not have inherent powers—and I think that Cohen is absoutely correct in saying that the two notions are consistent with each other.

In terms of objectivity, also, the author gives a summary of Federal policy as expressed through Congress. The author, I think he would agree, does support termination and reaches this conclusion. Termination was suspended because Indians who are members of terminated tribes were not equipped for work termination. There is no authority for that cited in the article.

I think this Commission knows very well that that is not why termination was suspended, because the tribes were not equipped for that.

Commissioner Bruce was Commissioner of the Bureau of Indian Affairs at that time, and many other Commissioners have first-hand knowledge. Termination—as is shown by a tremendous amount of research by this Commission, and is reflected in the Menominee hearings—was rejected because it was wrong.

Many, many Congressmen have gone on record to that effect, and I think the article is incorrect in indicating why termination was suspended.

At another point the article—in discussing congressional action, and again I think seeking to reach a conclusion that tribes do not have inherent power, and that Congress is not operating consistent with that—discusses briefly a history of Federal legislation. There is a great deal of treatment given to the allotment era, there is substantial treatment given to the termination era, and there is substantial treatment given to the 1968 Civil Rights Act, but there is nothing discussed after the 1968 Civil Rights Act to indicate what Congress intent is, and the summary of legislation by Congress concludes this way: "It is in this holding pattern that Congress continues to operate."

I don't believe Congress is in a holding pattern. Many people have said, and I for one go on record to this effect, that the 93d Congress was the greatest pro-Indian Congress in the history of the United States. It passed more than a dozen acts supporting self-determination and encouraging tribal sovereignty. I think that a fair treatment of congressional history cannot describe that era as a holding pattern. It was an era when Congress came down hard on the side of tribal sovereignty.

I indicated earlier—an objection I had to Mr. Martone's interpretation of the *Mazurie* case—he gave very short shrift in his article in discussing the question of inherent tribal sovereignty—that *Mazurie* might be more important than any other case for a statement that tribes do have independent authority, and that was not raised in the article.

The article also questions, in several different places, the constitutional authority of Congress to pass legislation giving special benefits to American Indians. That is mentioned at page 634. The article suggests that such congressional power is questionable. It is not questionable. Three recent cases have come down and have felt that Congress has power over Indian affairs and that Indian tribes are political entities. I suggest that that legal point is now clear. The Congress does have authority to legislate in regard to American Indians, that it is not unconstitutional. I mentioned a point of view earlier—and I think the Commission is well aware of this—that the points set forth in the article I am discussing are way up into the spectrum. They appear to be terminationist in thrust.

The main point I suggest that the author makes, and he says it expressly, is that these matters are largely a question of policy, and it is now this Commission that has on its desk the question of how to decide these policy matters.

The views of the opposite extreme, that tribes are international sovereigns, has also been rejected by this Commission. This article, I suggest, comes down in the other extreme—the extreme of termination or very rapid assimilation.

I think that some of the legal points in the article—and I say this as a staff member with a duty to level with this Commission—that the conclusions of tribal sovereignty are truly tainted in this article, that there is a lack of objectivity, to use a phrase that was used earlier today, and that the stated point of view of the article is terminationist, and that it is antitribal sovereignty.

My own conclusion, in struggling a great deal with this, is that that point of view—a terminationist philosophy—has slugged over to the legal reasoning aspect of this in some of the areas I have suggested.

It is my own feeling that this Commission is getting a good staff presentation and Mr. Martone's views should be heard. There is no question about that. But as far as inherent tribal sovereignty is concerned, in my judgment this article does not establish that there is no inherent tribal sovereignty, and the Supreme Court has spoken quite clearly to that recently.

Chairman ABOUREZK. Before we recess I would like to ask the staff if they would find that part in the transcript where we discussed enhancement and clarify that for the Commission immediately upon our return. We are in recess now until 1:30 p.m.

[Whereupon, at 12:20 p.m., the meeting was recessed, to reconvene at 1:30 p.m. this same day.]

AFTERNOON SESSION

Chairman ABOUREZK. Paul, are you ready?

Mr. ALEXANDER. Yes. Coming back to the point that was raised this morning, about what amendment we made to the trust statement, I have gone through that section and there was only one amendment adopted, proposed by the chairman. That was to say "Indian trust resources" instead of "land."

Chairman ABOUREZK. We didn't change the word "enhance" at all.

Mr. ALEXANDER. That is right, we did not. There was an extended discussion and Mr. Yates' final statement was, "I will accept it but I want to state for the record that I am concerned with the question of protecting and enhancing tribal self-government."

Then we voted to adopt the section.

Chairman ABOUREZK. Was there any other recommendation or request made by the Commission to the staff in that regard?

Mr. ALEXANDER. There was, at an earlier point in the discussion, a suggestion to special counsel for Mr. Meeds that perhaps he, in the minority statement, would draft an alternative.

That was never a motion of the Commission or anything of that nature.

Chairman ABOUREZK. All right, go to your next section, then.

Mr. TAYLOR. It will be on page 39.

Chairman ABOUREZK. Page 39?

Mr. TAYLOR. Yes, sir, page 39, which is the beginning of part A3 under "legal status"—its political relationship under the Indian Reorganization Act of 1934.

On page 39 we have our summary of findings and recommendations. The specific findings and recommendations appear on page 45. What this section of the report deals with is the relationship between the Secretary of the Interior and Indian tribal governments.

The legal authorities which the Secretary relies on in matters of approval or disapproval of tribal codes, and amendments to tribal constitutions—we discussed certain situations where the Secretary has assumed the authority with respect to tribes that are not organized under the Indian Reorganization Act, to suspend their tribal constitutions and virtually suspend their government pending an action or adoption of a new constitution.

There is one situation in the State of Kansas—the Potawatomi—where such a suspension resulted in the tribal government being virtually terminated for a period in excess of 2 years.

They were a member of a multitribal group and in order to have a representative of that multitribal group, so that they could continue to get Federal benefits, the Secretary had to name a spokesman for the tribe.

There is really no legislative authority for such action on the part of the Secretary. I think the feeling of the Department of the Interior is that they started wrongly on the path in that case. They thought a new constitution would be adopted in 6 months but, in fact, it just didn't come to pass.

So what we are recommending in this section is really a refinement of the role of the Secretary vis-a-vis tribal governments. Page 39 is a summary of our findings. We find that the role of the Department of the Interior, in relationship to the internal political affairs of the tribal governments, has been excessive and has tended to stifle tribal initiative.

The approval part of the Secretary of the Interior should be limited to matters involving trust assets. A provision should be made for appropriate safeguards for tribes who override secretarial disapproval on decisions they make regarding their trust assets.

We recommend the extension of various sections of the Indian Reorganization Act. The tribes which are not reorganized under the Indian Reorganization Act; namely, the authority of the Secretary to acquire lands for a tribe, the indefinite suspension of the trust periods, entitlement to access to revolving loan funds, et cetera, and Indian appointment preference.

Commissioner BORBRIDGE. Mr. Chairman, I have a question I would like to direct to the staff. On page 39 under two, and I quote: "provision should be made, with an appropriate statement, for a tribe to override secretarial disapproval."

Suppose that the tribe, in choosing to override secretarial disapproval, proceeds and in so doing harms itself. Is there a suggestion that it is waiving its right to come back against the trustee in this situation? Where is the liability and when does it cease under these circumstances?

Mr. TAYLOR. I don't think that is specifically spelled out. It should be. it was referred to in task force No. 9's report, and also in task force No. 2's. We cannot authorize a tribe to override a secretarial disapproval and still expect to hold the United States liable, if that decision was wrong.

So, what we have suggested, is a procedure that appears in our written position here. When a tribe proposes to take so much, with respect to a trust resource, the Secretary expresses himself on that subject, either in approval or disapproval. If he is disapproving what they are proposing to do, he would have to demonstrate his concern about how it might be jeopardizing that trust resource, and why he thinks that that action is inappropriate. He has to appraise the tribe of that so that they can then reevaluate their decision and come to an intelligent decision of their own.

If they decide they want to go ahead anyway, they can override the secretarial disapproval and proceed on with their project. At that point the Secretary's responsibility would continue under the full-trust scale, but only in the sense of lending technical assistance—all aid necessary to monitor the performance of the project and protect them in the operation of the project.

Commissioner BORBRIDGE. May I interrupt? Have there been instances, under the operation involved today, where a tribe has insisted on taking certain steps and perhaps even done so and the Secretary has signed off and then, subsequent to their action, a case was brought holding the Secretary liable? Has this occurred?

Mr. TAYLOR. There is a case from around 1940. It is a case that the Secretary constantly cites, the Seminole nation versus somebody, probably the U.S. I guess. Alan, are you familiar with that case? It was held that a tribe proposed to take some action with respect to a trust resource—it may have been money in the bank—and the Secretary approved their doing whatever it was they wanted to do. I don't know whether there was a criminal defalcation with the money or what happened, but there was a loss of that asset. A subsequent tribal council came in and brought a suit against the United States for failure to meet its trust obligation, and the court held that the obligation of the trustee required that he look behind the actions of the tribal government.

If that legal posture is continued, the Secretary really doesn't have a great deal of choice. But to really disregard the decisions of tribal governments and look behind any judgment they make——

Commissioner BORBRIDGE. I guess the point I am trying to determine is that I want to be certain that, as we make the recommendation, it cannot be thereafter stated that we were somehow desirous of having it both ways. We should make it quite clear as to which way we want to head in this instance. I think it would make our position on this recommendation tenuous if it could be construed by someone else as a desire by the Indians to have it both ways; that is, have the benefit of the trust relationship and yet be able to do what they desire and still be able to hold the trustee accountable.

If the mechanics are such that it prevents this type of action, then I think we have a workable recommendation.

Mr. TAYLOR. Mr. Commissioner, our recommendations go directly to the specific sections involved. There is an additional mechanical procedure that I agree needs to be put in order to make clear exactly what you just said.

The purpose of this really is to allow tribes to have some say in the use of the trust resources. There was a case, I think it was Quinault, that wanted to set up a lumber mill operation, and in order to raise capital for that they had to mortgage trust property, and they could get tribal capital through a local bank, if they could do that.

I think the bank wanted a waiver of tribal immunity so that if there was a default on the loan they could come in and foreclose on property. The Secretary would not approve that waiver of the tribe's immunity because it would jeopardize the trust asset.

That being the case, the tribe was not able to justify the funding necessary to go into that economic enterprise.

I hope I am squaring the points that you have cited.

Commissioner BORBRIDGE. I just wanted to be sure that the recommendation as stated encompasses the explanation that you offer, as to whether it can.

Mr. TAYLOR. Yes, sir.

Commissioner BORBRIDGE. Thank you.

Commissioner BRUCE. Mr. Chairman, we had an instance while I was Commissioner. In Montana a tribe was dealing with a bank. Its funds were deposited in that bank. Then the tribe found it very difficult, in fact impossible, to individually borrow money from the bank.

They asked if I would approve a transfer of their money out of that bank, and by doing so, as I recall, they would lose something like $89,000. This was the decision that the Secretary had to make, and he refused to make it.

Later on, after some meetings, Harrison Loesch said to me, isn't this proving what we say, that the tribe ought to be able to make its own decisions in this matter and that there must be some protection for the Secretary as trustee.

We approved, and they made the transfer. What we were concerned about and worried about was, you know, 30 years from now somebody will pick that up and say that the Secretary didn't fulfill his obligations or his responsibility as far as trust funds are concerned.

That is a part of this issue. I think we ought to be careful how it's worded, because we did want them to make the decision on their own. They knew they were losing money, but there was a broader reason for our concern.

Mr. Taylor. The only thing we would couple with it: We would allow those tribes to make those kinds of judgments. We are providing that the United States is relieved of the liability and the consequences of that decision, namely the $89,000 clause.

The Secretary continues to have a trust responsibility on how the money is handled thereafter. In other words the tribes are not stuck in a position that is black and white. In order to have some control of their trust funds they have to take it out of the trust status.

Because tribes are not going to take their assets out of trust status, and if we leave it in this black and white legal posture, frankly the Secretary is justified in his disapprovals and the tribes will never be able to use their assets as they see fit.

So we are trying to reach an accommodation here, and I think it is a very reasonable proposal. Our specific recommendations appear on pages 46 through 47. Essentially they are accomplishing what I have just outlined in the summary. It refers to specific acts that require amendment and suggesting what it is that needs to be done with those acts.

Recommendation No. 1 recommends that section 18 of the Indian Reorganization Act—which provides that no part of the act shall apply to any reservation wherein a majority of the adult Indians vote against its application—that section should be repealed.

The purpose of that repeal is to extend the same benefits—land acquisition, revolving credit funds, Indian preference and employment—to non-IRA tribes. We frankly do not believe the Indian Reorganization Act is really intended to deny those benefits to Indian tribes generally. This is the opinion of task force No. 2, and I believe the staff here. So repeal of section 18 would allow the extension of those protective benefits to all Indian tribes, regardless of whether they are organized under IRA.

Chairman Abourezk. Pete, is this in its final form?

Mr. Taylor. Basically yes, except for the amendments that Commissioner Borbridge asked to be added to it, namely the amendment provides for the waiver of liability under the Secretary.

Chairman Abourezk. Couldn't you say that the Commission recommends the repeal of section 18, for example, and set out in quotations the specific language you want stricken?

Mr. **Taylor**. We could do that, Mr. Chairman.

Chairman **Abourezk**. Or the lines.

Mr. **Taylor**. At one point in our drafting of this it was pointed out that frequently there is a resentment, if you actually prepared statutory language and then go out to Indian country to consult, because they feel like the consultation process is meaningless. You have already done this and what are you there for.

Chairman **Abourezk**. I don't understand: What do you mean by that?

Mr. **Taylor**. There is a feeling that the consultation process—if you are carrying out a completed statute for their examination—is really sort of a farce, that their input has not been sought.

Chairman **Abourezk**. Wouldn't that be true for every recommendation you make?

Mr. **Taylor**. That is why many of these recommendations are phrased in the narrative form instead of proposed legislation.

Chairman **Abourezk**. But, the recommendations that we do have, the rules that you just said would apply to those too?

Mr. **Taylor**. Yes, sir.

Chairman **Abourezk**. We decide the ones we have in narrative form and state the specific recommendation. Why would it be true of them and not of this one?

Mr. **Taylor**. I am not sure how many recommendations we have that specifically propose legislative language.

Chairman **Abourezk**. Well, we say Congress should appropriate money for such and such, you don't put in the figures, necessarily, but you are very specific about appropriate, and in fact that is what we are here for.

If somebody out in the field doesn't like it they can change it, they can agree with it, or they can amend it.

Mr. **Taylor**. Well, frankly, Mr. Chairman, my preference, if I were sitting out in Indian country, is I would rather have a man bring me a statute that I could tear apart.

Chairman **Abourezk**. That is right.

Mr. **Taylor**. But it is my understanding that the Indian community has a different reaction to it.

Chairman **Abourezk**. To begin with, it is unprecedented that any Commissioner, in any legislative forum, would go to such lengths as this Commission has to elicit comment from the community affected. I don't think anybody is going to complain out there about that. At least, if you are asking to repeal something, you ought to say specifically what ought to be repealed. I don't know how you can be general about that.

Mr. **Taylor**. In this case, sir, there would be no problem to specify that precisely.

Chairman **Abourezk**. I am going to have to apologize once more for sounding like a broken record, but I am going to do it each and every time because I feel so strongly about it, but to adhere to this section—if you just simply say the Commission recommends repeal of section 18, specifically the following language: colon quote.

Mr. **Taylor**. Right. There is no difficulty in doing that.

Chairman **Abourezk**. I had to read this particular section twice to figure out what you meant.

I know some of you probably sat up late at night and did this, and it takes more time to put down the proper language, but nevertheless I wish the staff would do it.

Commissioner BORBRIDGE. Mr. Chairman, I would certainly concur, because with respect to the question raised as to whether or not the consultative process with the tribes would be subverted or eroded, if specific language would be offered it is my opinion that we would be subject to charges of waffling or not concluding our task if the specific language is lacking. And certainly with respect to this two-part recommendation—one is a recommendation to repeal, and the other to commend—there is no other way to go but to be specific. This in no way violates the spirit of the consultative process at all.

Mr. TAYLOR. We will make that recommendation.

All right. The second recommendation is that section 16 of the Indian Reorganization Act, which authorizes the tribes to organize, be amended to specifically reflect the fact that tribes have an inherent right to form their own political organizations in a form which they desire which is well established law and provide that notwithstanding any provisions in existing tribal constitutions vesting the Secretary with approval authority that the authority of the Secretary over the actions of tribal government would extend only to matters relating to the trust responsibility.

Second, paragraph 3 would amend section 2 of title 25 to correspond with the amendment we are proposing to section 16 of the Indian Reorganization Act. Namely, limiting the approval and disapproval power of the Secretary to trust-related matters, and requiring that when he does make a disapproval he must apprise the tribes of why so that they can act intelligently.

The fourth recommendation is an amendment to section 81. Again, it is part of the scheme proposed in paragraphs 2 and 3. Section 81 imposes the trust responsibility on contracting and related trust assets. So all of these amendments relate to authorizing tribes to make decisions regarding their own trust assets and make this limited waiver of liability for the Secretary.

Mr. PARKER. Mr. Chairman, I would call the Commission's attention to the references to the specific statutory language which are contained in the tribal government task force report. The recommendations that you have in front of you, in each case, have been referenced to a page number in task force 2 report.

This responds directly, I think, to the inquiries from the Commission that what would be the specific statutory proposal. That specific statutory proposal is contained in the text of task force 2 report.

This recommendation that you have in front of you cross references to the task force 2 report and it is just as an afterthought that this specific document, that you have in front of you, probably should have incorporated that specific statutory language. But in any case it does refer you to task force 2 report wherein that specific language is and can be found.

Mr. MARTONE. Mr. Chairman, I would like to refer your attention to recommendation No. 3.

Chairman ABOUREZK. What page?

Mr. MARTONE. Page 47, recommendation No. 3. It seeks to limit the authority of the Secretary to actions relating to the protection of tribal trust assets. The definition of the Federal trust responsibility, as this Commission has approved it under chapter 4, goes beyond trust assets to include tribal self-government.

It seems to me a little inconsistent that the Secretary of the Interior is to have duties with respect to its Federal trust relationship, both for trust assets and for self-government, but have rights only with respect to trust assets.

It seems to me that rights and duties are correlative things. I guess what I am saying, if the Secretary has no authority with respect to tribal self-government, as this recommendation would suggest, then how does he have a duty with respect to tribal self-government under the Federal trust responsibility?

Chairman ABOUREZK. A good point. How do you respond to that?

Mr. PARKER. Mr. Chairman, I would respond to that, bearing Mr. Martone's arguments to its logical conclusions, you would have to conclude that the Secretary would necessarily have complete supervisory control over all aspects of tribal self-government, or else he would not have a trust responsibility. He would have no liability to protect, or he would have no responsibility and consequent liability if he failed to protect the rights of self-government.

I think the point that has to be made is that there is clearly a distinction between trust responsibility, insofar as it applies to protection of natural resource physical kinds of assets, and trust responsibilities in the sense of a responsibility to protect the right of self-governing.

In one case we are talking about a trust concept, which is very closely akin to the common law concept of trust. In the other case we are talking about a trust concept which is entirely unique—parallel to the common law concept of the trust. But, obviously, it has to be distinguished.

Chairman ABOUREZK. How would you distinguish it?

Mr. PARKER. I think you would have to distinguish it in a specific context of a protection of a physical asset which would imply a responsibility to supervise the control of that asset, and a failure to properly supervise the control of that asset results in a liability on the part of the trustee.

This is entirely within the scope of the common law concept of the trust. But when you are talking about a responsibility to protect the right of self-government, we are talking about a concept of self-trust, which implies something, well I think it would have to be defined in the context, say, of the language which is found in our commonly cited precedents of *Worcester* v. *Georgia* and *Cherokee Nation* v. *Georgia*, where the concept of trust is developed, and reasons along the lines of dependency and a relationship between the domestic dependent nation concept, and the superior sovereign, which has exerted its sovereign authority over these domestic entities.

Chairman ABOUREZK. That is all fine, but that doesn't resolve the conflict between the two sections. Mr. Martone points out that in one case the trust is extended over the tribal governments themselves and in another case it is taken away.

There is a conflict, you can't deny that, how do you distingiush it?

Mr. ALEXANDER. It is a policy issue for Congress on how to provide, in a sense, the obligations under the trust to the tribal government.

The Federal Government does this basically through economic support, and through litigation and support of tribal jurisdictional powers.

What it's done on the other side doesn't have to be controlled with every activity of the tribal government. What it's done is, instead, pass the Indian Civil Rights Act in which it has set out the standards by which the duties, if you will, that Indian tribes will be held. In a sense the Federal Government has defined what its expectations in this area are rather than defining it through day-to-day secretarial discretion.

Chairman ABOUREZK. Let me give you an example. This recommendation says that you're going to limit the authority of the Secretary of the Interior only to actions relating to protection of tribal trust assets. What if the tribe voted to waste its assets and as trustee the Interior Department of the Federal Government tries to overrule that, and through this process that you recommend can't overrule it.

In one sense it is violating its role as trustee, and in another sense it is assuming that they are not even a trustee at all, they are just there to try to advise if they are asked.

I don't care which side you come down on right now, I'm just saying you have got a conflict and we ought to decide how to resolve it in these pages.

Mr. TAYLOR. On the potential for the dissipation of the trust asset, which is one element of this, the Secretary has the power to disapprove but he has to explain his reasons for disapproval, so that the tribe can reconsider what it is doing.

Chairman ABOUREZK. All right, but does the tribe have a right to overrule him?

Mr. TAYLOR. Yes, under those proposals, yes. Frankly I would think that if the Secretary comes back and raises very serious questions about a jeopardy to that trust asset, I would think the tribe would probably back off.

Chairman ABOUREZK. What if they didn't?

Mr. TAYLOR. If they didn't, Senator, I don't know what I would recommend. Maybe if I was the Secretary I would come to Congress and say, "I need some help here. These people are about to kill themselves."

Chairman ABOUREZK. What if he did do that and what if he allowed the tribe to waste its assets and members of the tribe brought a lawsuit against the Secretary saying he violated the trust: What happens then?

Mr. PARKER. Mr. Chairman, we go back to the other recommendation which Pete was speaking to earlier, where we are proposing a mechanical device, where the Secretary disapproves and the tribe wants to proceed with its action, and some sort of procedure where the Secretary's liability is limited, if the tribe wishes to try to proceed with notice of his waiver.

Chairman ABOUREZK. In other words you exclude him from liability. You exempt him from it.

Mr. WILKINSON. Mr. Chairman, the situation you have just set forth would be treated under these proposals, not as an exercise in self-government but as a protection of tribal trust assets. So because the tribal resolution you are talking about is tied to trust assets, it would not come under these proposals here, but under the proposals we were talking about earlier.

Chairman **Abourezk**. I hope you have made that clear, because I don't think it is clear to the Commission at this point.

Mr. **Parker**. If I might return to the subject: I think it is a policy decision on which the Commission is obviously in a position to exercise its judgment. The Commissioners may well decide that they don't want to take this position—which is to provide for authority in a tribe to override a disapproval by a Secretary, and thus limit his liability.

Obviously, there are problems which wouldn't be hard to imagine where a particular group or tribe may wish to proceed in this way against the wishes of the majority if the majority, for example, had notice of this.

I think the only way to protect the rights of the majority, in such an instance, would be to require some sort of a referendum procedure before the tribe can actually take that action to overrule the disapproval of the Secretary and thereby limit his liability.

Chairman **Abourezk**. Well, that may be true. The existing language that you read before has a big loophole in it. That is all I am saying. While these verbal explanations are somewhat soothing and reassuring, they don't exist on paper, or at least not that I have read. I think you ought to get it in there, so it can be understood, once again, because you are not going to be around forever to explain that.

Commissioner **Deer**. Mr. Chairman, I would like to report on Mr. Parker's suggestion by referendum.

Chairman **Abourezk**. That is fine.

Mr. **Martone**. Mr. Chairman, I could illustrate what I mean by the problem, as follows: Let us suppose that a duly elected tribal council enters into a contract with a county that it happens to be in for the use of county or State police for interim protection until the tribe has its own resources to provide the same sort of thing.

Presumably, that issue goes to self-government. Suppose that dissidents in the tribe then sue the United States arguing that the contract somehow affects the trustee's responsibility with respect to self-government, and it infringes on inherent tribal sovereignty, and we don't think that ought to be done.

The Secretary says: "I don't have any authority with respect to tribal self-government and though it is somehow within my trust responsibility, I have no authority under that portion of the responsibility."

Mr. **Taylor**. On the example that is raised I don't have much difficulty with the defense of the Secretary. It seems to me that is what tribal self-government is about, and that individual's complaint is against his own government.

Mr. **Martone**. Then, it seems to me, you have proved my point that self-government should be taken out of this quote, "Federal trust responsibility," if he has no authority.

Mr. **Wilkinson**. If he has no authority, because if they were later sued by the county, the U.S. attorney should be available if the tribe wishes to defend the tribe, and that's where the trust responsibility would be fulfilled.

Mr. **Parker**. The responsibility to provide legal representation to protect the rights of the tribe and the exercise of self-government.

Chairman **Abourezk**. It seems to me that what you ought to say really is that trust responsibility extends to tribal self-government except in those cases where the tribe, for specific procedures outlined here, decides the opposite. Is that fair, and is that a fair representation of what you are trying to say?

Am I right?

Mr. **Taylor**. Senator, I don't think we can equate trust responsibility with secretarial control. If that is what trust responsibility is then tribes are going to be forever dependent.

Chairman **Abourezk**. That is the trouble. You have to equate it because if you take ordinary trust law, throughout the jurisdiction of the United States, the trustee has specifically set out responsibilities for it to work for the beneficiary of the trust. He has specifically designed responsibility for that beneficiary, and that includes, especially if it is a minor—somebody under age, underwriting or approving every single economic decision that that beneficiary is making.

Am I correct in that?

Mr. **Taylor**. I understand the extent to which the trust relationship is permeating this whole thing, but what we are trying to do is, to some extent, get some freedom here where the tribes can operate with some degree of independence.

Chairman **Abourezk**. Fine, I am all for that.

Mr. **Taylor**. But I think the exchange that took place right here between Fred and Charlie pretty well spells it out. The tribe enters into this contract, the county picks this guy up, his complaint really is against his own government. But if a suit is filed against that tribal government on it then the trust responsibility would extend to coming in and protecting the tribe and the governmental action that it took defending them in court.

Chairman **Abourezk**. Don't we express it much better saying that the trust responsibility extends to all tribes except in those cases by which a certain process, a tribe votes to except itself from that responsibility.

Mr. **Taylor**. I find that language pretty broad. I would really have to stop and think about it.

Mr. **Alexander**. Can we get to the example? I don't even understand the example because it is a normal exercise of governmental power to contract with anybody you wish. If the United States enters into a treaty with Canada to regulate seals, whales, or what have you, what is the right of the citizen to sue the U.S. Government for giving up sovereignty jurisdiction?

I don't even understand the basis of the suit.

Mr. **Martone**. The basis to me is quite clear. You made a distinction—I guess that is where we are going—I don't know what it means for tribal self-government to be within the Federal trust responsibility. I can understand that concept with respect to assets, but what does it mean with respect to self-government?

I think you are suggesting it is a one-way street. You are getting to the problem that Commissioner Borbridge got to: Are you having it both ways? That is to say, is it just open to liability with respect to the United States or does the United States have some authority with respect to tribal self-government?

Mr. **Parker**. In exercise of an authority with enactment of the Indian Civil Rights Act.

Mr. MARTONE. The Indian Civil Rights Act is a limitation on the power of the tribe not the United States.

Mr. PARKER. The United States enacted that law specifically to limit the powers of tribes.

Mr. MARTONE. It doesn't protect the sovereignty of the United States by suits of tribal members or the tribe against it. My concern is not with the dissidents against the tribe, as Charlie has mentioned, but concern about suit brought by dissidents against the United States. The United States will say, and the plaintiff will say, that self-government is under the trust responsibility, as this Commission has defined it.

But then it will say, "but I don't have any power with respect to that responsibility, I don't know what I can do for you." Can the United States ever be liable with respect to the trust responsibility as it includes self-government?

If your answer to that question is "yes," then it seems to me that the Secretary has to have some control over its liability.

Mr. TAYLOR. It strikes me that we are bogged down in excessive legalisms here. I think that one of the functions of this Commission is to try to set some policy directives. We have got a temporary Indian committee which is coming in which will study legislation for 2 years. Now, some of this material is going to require refinement, and I think you pointed out a potential problem here.

It is one of the problems of trying to put this into specific legislative language. I think what we need to be considering here is the broad direction of the legislative determinations of this temporary committee. Is it going to be directed toward the kind of problems we are going to be focusing on?

Now, this debate that is going on right here can go the rest of the afternoon, and possibly the next 2 years.

Chairman ABOUREZK. That is true, Pete. Let me shut off the debate by saying this: There is obvious conflict, there is an unclarity of definition that I find difficult to resolve myself, and I am pretty sure that some of the other Commission members have the same difficulty. I don't think you have worked it out yet. We haven't worked it out for certain.

I would hesitate to vote to adopt anything that contains such an obvious conflict and such ambiguity. I, for one, and the rest of the Commissioners with the same vote have to defend this report.

Mr. TAYLOR. Senator, the alternative, as I would see it, would be rewriting certain of these recommendations to say that Congress should consider legislation that will accomplish in broad purpose the following results, or attempt to go in this direction.

Chairman ABOUREZK. That is what I was saying.

Mr. TAYLOR. But it is going to be fairly general language.

Chairman ABOUREZK. That is fine.

Mr. TAYLOR. I think we can do that.

Chairman ABOUREZK. Back to this other section where you talk about repealing such and such language, the way you have it worded, you have no alternative but to put in specific language.

If you want to change that and say that Congress should repeal any portion of title 18 and so and so, that requires overriding of the tribal group or whatever you said, you can be that general. As far as the way you word it the way you did, you had to be specific, you left yourself no choice.

Commissioner BORBRIDGE. Mr. Chairman, I want to reiterate my concern. I see the trust responsibility on the part of the Federal Government extending to the trust resources and to tribal self-government.

Where I have difficulty is not with the concept as to what was intended but with the language. It was to be clearly understood that while holding the trustee accountable, and in that context we discussed liability or justifiable cause of action, at the same time we were talking about waiving some aspects of that trust relationship.

Perhaps you have not clearly spelled out what, thereupon, would happen to that liability. I don't want to get bogged down in some of these detailed concepts, but I am not sure that the language truly achieves that.

I think that the suggestion by the chairman, to which you responded, would take care of those concerns.

Chairman ABOUREZK. When we come back to the next meeting can you offer something different on this?

Mr. TAYLOR. Yes; sir.

Mr. WILKINSON. I would like to say, just extremely briefly, that the notion came out of here from the cases involved by Reid Chambers in his law review article on the trust relationship.

The key point he was trying to make is that States are making incursions on tribal self-government, taxation, courts, or whatever; that attorneys funded by the United States must be available to the tribe where States are attempting to make improper incursions into the reservations. That is what these recommendations are primarily aiming at.

The reason that the approval power is not extended is because there would be no tribal action for the Secretary to approve in that kind of situation. It would just be the State attempting to tax, and that is what we are attempting to get here, is to be certain that the United States will be defending the tribe and the tribe wishes.

Chairman ABOUREZK. I think we should say that, if that is the case, Charlie.

Mr. WILKINSON. That is my feeling also.

Chairman ABOUREZK. You have one intention and you write down another intention, it is too unfair to be introducing it.

Well, we will look at this over the weekend and bring it back at the next meeting, with something different, right?

Mr. TAYLOR. Yes, sir.

Mr. TAYLOR. At this point we are on section A-4 which starts on page 48. It deals with a recommendation to the amendment of the 1968 Civil Rights Act and a provision that would accord laws and judgments of tribal courts and tribal councils recognition or standing in the courts of States and the Federal Government.

Chairman ABOUREZK. Where are the recommendations?

Mr. TAYLOR. Page 48 is the summary. The specific findings and recommendations are on page 59. Actually, the narrative section of this portion is essentially a recitation of findings. Our first recommendation is that the judicially evolving rule requiring exhaustion of tribal remedies before a Federal court takes jurisdiction over a proceeding should be rigidly enforced. Our evaluation of the cases under this act show that it is a rather hit and miss doctrine of the courts right now. It is particularly a miss doctrine, when a complaint is filed in the court and, for some reason or other, adequate representation for the tribe does not appear to defend. I frankly think the court, when confronted with the complaint itself, should question whether the tribal remedies have been exhausted before it will accept jurisdiction.

The exhaustion requirement should include all the tribal remedies, the administrative remedies, the tribal court, and any tribal appellate court systems that may exist. This should be a very rigidly enforced requirement.

Chairman **Abourezk**. Shouldn't there be specific legislative authorization for something like the Administrative Procedures Act of the Federal Government? Should we have a specific piece of legislation requiring exhaustion?

Mr. **Taylor**. I think we could have an amendment to the 1968 Civil Rights Act, codifying that exhaustion.

Chairman **Abourezk**. Yes; I don't know how legally it could be enforced unless we pass a law but I think you ought to do that.

Mr. **Taylor**. All right. The second recommendation is that review of the actions of tribal government—particularly tribal courts—should be limited to the record of proceedings in tribal courts, where such a record has been maintained. At this time, many tribal courts don't have the equipment to record their court proceedings.

Frankly, the tribal courts could easily be equipped with recording devices at, I think, a nominal expense.

Mr. **Alexander**. There are recommendations for that later on.

Mr. **Taylor**. There is another recommendation on the recording devices in another portion of this chapter. But we are saying that the review should be limited to the record of the tribal court proceedings where such a record is maintained. There has been criticism that these review proceedings, in a situation where there is no record, are taken virtually at a de novo trial where the U.S. district court simply becomes a retrial of the case through a habeas corpus proceeding. In this instance here the recommendation for the solution would appear——

Mr. **Alexander**. It is in part D at page 125. Those were recommendations on tribal courts generally and appellate systems that we will be making.

Chairman **Abourezk**. Should this belong in that section?

Mr. **Taylor**. I think that paragraph should.

Chairman **Abourezk**. What page is it, 125?

Mr. **Alexander**. Yes.

Chairman **Abourezk**. It is not as simple to provide a court record as you say because not only do you have to have a recording machine, you have to have somebody to type it up, almost instantly, after the trial is over.

Mr. **Taylor**. That is true, but the number of criminal appeals out of trial courts is, thus far, I am sure, less than a half-a-dozen in the 8-year history of the act.

Chairman **Abourezk**. Don't you have to set up a specific procedure for that kind of thing?

Mr. **Parker**. Mr. Chairman, are you asking on the question of court of record?

Chairman Abourezk. Yes.

Mr. Parker. Prior to coming to the Commission I was engaged in some research on that particular question. It is an ongoing area of the law that just needs much clarification. My research revealed that a court of record is a very flexible term and is not tightly defined in Federal law or in common law. The concept is a fairly well-agreed-upon one. A court of record is a court which maintains a record—a court which issues written orders or opinions or whatever in each case where the court makes a decision. I think that that is basically the fundamental aspect of a court of record. I don't think a court of record requires that the transcript of all proceedings be typed up, simply that they be available.

Mr. Alexander. In the District of Columbia the district court uses a tape system which the judge seals and if an appeal is taken, it is then transcribed, which is a much more economical device.

Chairman Abourezk. There ought to be some kind of procedure for that.

Mr. Alexander. The recommendation is essentially that funding be provided so that tribal courts can become courts of record. In a Navajo situation, with a heavy caseload in the appellate court system, it may be functional for court reporters and in Gila River they may have a tape system. It varies.

Chairman Abourezk. It seems to me, in recommendation No. 2 on page 59—where you say all tribal courts will be equipped with recording devices—that particular language seems to be out of place in a recommendation where you want to be totally general and say that it ought to have a procedure set up. Why do you have recording devices as the answer? It is not. There are other things as well.

Mr. Alexander. We will use the type of language that is on page 125.

Chairman Abourezk. All right.

Mr. Taylor. The third recommendation on this page is that the review should not turn on procedural niceties but should rather be premised on the concept of fundamental fairness based on the entire record. Several decisions under the 1968 Civil Rights Act have adopted that standard as the basis for review. It goes to the question of whether or not the 1968 Civil Rights Act was intended to blanket in all-Federal constitutional law with all of the mechanical safeguards and procedures which are applicable in Federal courts. I think the history of the act, the relationship of the tribal governments and tribal courts in the Federal legal structure would clearly reflect that the act is not intended to bring in wholesale all of the Federal constitutional law but rather the act was setting out certain standards and some Federal courts, in dealing with this 1968 act, adopted this fundamental fairness concept, but not all Federal courts have. Again, it is one of these hit-and-miss things.

So what we are suggesting here is that the more flexible standards adopted by some of these court decisions, be incorporated into the 1968 Civil Rights Act—codified into it. Again, the specifics of the statutory language is not here, but the concept is what we are after.

Mr. Martone. Mr. Chairman, it seems to me that one's perspective of these recommendations involving the Civil Rights Act of 1968 and one's agreement or disagreement with the recommendations may largely hinge around the jurisdiction of the tribal court. This Commission has recommended that the tribal court have jurisdiction over non-Indians. If that be the case then one's response to these recommendations may be one way. If tribal court jurisdiction is limited to tribal Indians, then one's response might be another way. What I am getting at is, it is one thing to say that tribal courts should not be boggled down with the Federal constitutional rules of decision—euphemistically called procedural niceties—when they are dealing with their own citizens. It is quite another thing to say that these rules of decisions, and procedural niceties, are not something of interest to perhaps non-Indian litigants before that court. This comment goes to the exhaustion requirements as well.

It is quite one thing to say that a reservation Indian should exhaust his own processes. It is another thing to say that a non-Indian litigant should. My concern is that it does not seem clear to me why it is a positive thing to eliminate Federal constitutional rights or Federal rules of decision, especially as regards non-Indian litigants because, at least, with respect to Indian litigants, they can be said to have subjected themselves to the jurisdiction of their own sovereign.

Chairman ABOUREZK. I thought we had made no recommendations as far as jurisdiction over non-Indians on reservations. We adopted that this morning.

Mr. MARTONE. Peter, you discussed that——

Mr. TAYLOR. Yes; our recommendation was that there be no legislation on the subject.

Mr. MARTONE. That is right. But we are talking about A–1 and the recommendations were that tribal courts have jurisdiction over the non-Indian.

Chairman ABOUREZK. I don't remember that. Where is it?

Mr. TAYLOR. Our findings were that the case law was to have found that tribes had, on at least two occasions, asserted criminal jurisdiction over non-Indians and that certain administrative decisions——

Chairman ABOUREZK. What page is that recommendation on that says no legislation should be enacted?

Mr. MARTONE. Page 29 says no legislative action but at page 28, just preceding it, it says there is established legal basis for tribes to exercise jurisdiction over non-Indians. That probably is the most interesting and the most volatile issue in Indian litigation at the present time. There is a case in the ninth circuit, *Oliphant* v. *Schlie* that provides that tribal courts do have jurisdiction over non-Indians.

Mr. TAYLOR. That is precisely the case that that statement was premised on.

Mr. MARTONE. That is an unsettled issue in every other circuit and the U.S. Supreme Court has never ruled on the issue.

Mr. TAYLOR. I understand the petition for certiorari was filed in the case, too.

Chairman ABOUREZK. It is not settled. That is absolutely correct.

Mr. TAYLOR. I might add that is also the case Mr. Meeds commented on. No self-respecting court could have ruled otherwise.

Mr. WILKINSON. Senator, nonetheless, I think it is appropriate that Mr. Martone is indicating that we should proceed on the basis that tribal courts do have jurisdiction over non-Indians even though the

Commission does not recommend a change in the law. I think he is correct in saying that we should proceed on that assumption because it is our judgment that that is what the existing law is.

Mr. **Alexander.** What we are talking about though is——

Chairman **Abourezk.** Under that presumption would you make different recommendations?

Mr. **Wilkinson.** No, we do not believe it would make a difference.

Mr. **Alexander.** I think we should respond a little bit more directly to the question presented. The courts, in defining what has been called procedural niceties, is not talking about differences between criminal defendants in court, but the court in defending those remedies is talking about its frustration in being able to enforce rules against police and governmental apparatus. That has been a long-evolving history for the U.S. court system working in the governmental system of the United States. We do not, necessarily, as a matter of course, transfer that 200-year experience to a tribal court setting. A setting where there may be other mechanisms for holding governments and police departments accountable. So I don't think the distinction of who is before the court should change the procedural matters, because the procedural matters are not based on who is before the court.

Chairman **Abourezk.** Under the 1968 Civil Rights Act: Is there appeal provided from the decision of the tribal court?

Mr. **Alexander.** The Civil Rights Act provides for a habeas corpus proceeding. There is another general civil rights statute, I don't remember the number, which generally provides, when an appeal is under civil rights legislation, generally under the Federal district court.

Chairman **Abourezk.** Do you think it would be appropriate that non-Indians who might come under the jurisdiction of the tribal court be accorded the trial de novo in the Federal district court on the issue that it was brought before the tribal court?

Mr. **Alexander.** There is an assumption there that non-Indians would be treated somehow less fairly than Indians would in the tribal courts.

Chairman **Abourezk.** Not necessarily, no. I think, Paul, you are missing one thing. By preserving tribal courts you are attempting to preserve tribal customs. You are attempting to preserve a tribunal that would preserve tribal customs, but a non-Indian living within the boundaries of a reservation may not necessarily adhere to those tribal customs. I know you could essentially say: "well, if he is living here, he damn well better adhere to the tribal customs," but we are, in effect, changing a system that has been in effect 100 years and I think changing it for the better if we do that. But you are taking a non-Indian who has been living within the boundaries of a reservation for a long time who may not want to adhere to tribal customs and may say, "well, I want my day in a non-Indian court, such as the Federal court."

Mr. **Wilkinson.** Senator, the analogy we must draw here is between the tribal court system and the State court system. If an Indian ends up in the State court system, that Indian does not get a de novo trial in the Federal court.

Chairman **Abourezk.** But he gets an appeal.

Mr. **Wilkinson**. He gets an appeal, and so does the Indian in tribal court.

Chairman **Abourezk**. Where does he appeal to?

Mr. **Wilkinson**. In tribal court, well, it is not truly an appeal. It is an original action in district court.

Chairman **Abourezk**. All right; then a non-Indian can do the same thing.

Mr. **Wilkinson**. That is right.

Chairman **Abourezk**. That is what I am asking.

Mr. **Wilkinson**. Right.

Chairman **Abourezk**. All right, that is settled.

Mr. **Wilkinson**. But it is not de novo in the true sense.

Chairman **Abourezk**. But you said it is an original action.

Mr. **Wilkinson**. That is right; and the district court is reviewing what was done by the trial courts. It is a new case and the district court is reviewing. It is similar, to an action under the Federal Administrative Procedures Act.

Chairman **Abourezk**. Wait just a minute. Is that true only in criminal cases? What about civil cases?

Mr. **Wilkinson**. It would be true of the civil cases also.

Chairman **Abourezk**. Is it done under a writ of habeas corpus?

Mr. **Wilkinson**. That is one method but it can also be done under case law for an injunction of declaratory relief.

Chairman **Abourezk**. What about a civil case?

Mr. **Wilkinson**. Only if there are constitutional rights involved would they be permitted to go into Federal district court.

Chairman **Abourezk**. What if a non-Indian does not like the way he is taxed by the tribe?

Mr. **Wilkinson**. If he doesn't like it, just doesn't like it——

Chairman **Abourezk**. He lumps it.

Mr. **Wilkinson**. Right; but, and this is very important, if he can show discrimination on the basis of race, he can then go into Federal district court.

Chairman **Abourezk**. What if he can't show that?

Mr. **Wilkinson**. He would have no more right than would an Indian who was being taxed by the State. That Indian would be left for State court procedures and the same thing where an Indian would be left with tribal court procedures.

Chairman **Abourezk**. Wait. We have already shown a distinction between the two parallels you tried to draw. One is in a State court there is an appeal to the higher court. What I am trying to establish is an appeal to a higher court from a tribal court.

Mr. **Wilkinson**. You mean a tribal appellate court?

Chairman **Abourezk**. A tribal court decision. Is there an appeal from a tribal court decision to a higher court?

Mr. **Wilkinson**. A higher tribal court?

Chairman **Abourezk**. Any kind of court.

Mr. **Alexander**. We are recommending the permissive establishment, for development of appellate tribal court systems. When that system is intact——

Chairman **Abourezk**. No, no, Paul, back up. What I said was: The non-Indian who says I want my day in a non-Indian court. Now, let's proceed with the discussion on that basis.

Mr. **Wilkinson.** I believe it is fair to say that the non-Indian under those facts would have every right of appeal, could raise every right in the Federal court system that an Indian could raise on appeal from a State court.

Chairman **Abourezk.** Don't tell me that. Just tell me this: Can a non-Indian appeal to a Federal court from any kind of tribal court ruling?

Mr. **Wilkinson.** No; there would be some rulings they could not appeal.

Chairman **Abourezk.** Which ones couldn't they appeal?

Mr. **Wilkinson.** If my colleagues have any contrary feeling, please say so. I believe that on a standard personal injury case that went to a tribal court and there was a final judgment of the final tribal court—there were no civil rights or constitutional issues involved—I believe that would be the end of it. This same thing with a contract. But that would be the same thing in State court. You couldn't appeal to the United States Supreme Court.

Mr. **Abourezk.** You would appeal to the State supreme court.

Mr. **Wilkinson.** That is right. So there is no automatic appeal within the tribal court system.

Chairman **Abourezk.** That is what I am getting at. That is what I am asking. All right.

Mr. **Martone.** I think the basic problem arises out of treating this Federal civil rights act within the confines of habeas corpus. Two separate doctrines have developed. Habeas corpus, because that is in the act and that is really talking about release from custody, usually you are talking about criminal matters.

Chairman **Abourezk.** That is the only thing you are talking about.

Mr. **Martone.** Of course you have to be in custody to get the release. Well, that is not adequate relief in most cases. We are not talking about that in the average case. A whole doctrine has developed where there is Federal jurisdiction in the Federal courts under 28 U.S.C. section 1343-4 which provides that there is general jurisdiction in the U.S. district courts for deprivations of rights under any act of Congress relating to civil rights. Most courts which have dealt with the issue have held that the Civil Rights Act of 1968 is such a civil rights act which entitles a party litigant to go to Federal court for Federal jurisdiction for a deprivation under that. That is an interesting theory and it is one which is of great interest both to Indians and non-Indians but it really is not adequate because, as Charlie points out, it is a rare case in which one is aggrieved over basic constitutional rights. The day-to-day problems of people revolve around lesser matters; matters in contract, matters in real estate, and matters in tort.

Chairman **Abourezk.** Money.

Mr. **Martone.** Money. There is no appellate review, either by appeal or petition for writ of certiorari from a judgment of the tribal court to the U.S. Supreme Court. There is review in the U.S. Supreme Court from judgments of the court of last resort of the State. In fact the existence of that avenue of relief in Federal court from the court of last resort of the State was a concept which the Supreme Court relied upon in the *Aiken* case—the reserved water rights case—and was used to suggest that Indians need not fear the litigation of federally reserved rights in the State court because there is always judicial review in the U.S. Supreme Court, by petition for writ of certiorari. No such avenue of review exists for judgments of tribal courts, and later on in this report they are going to recommend an amendment to the United States Code to provide full faith and credit for such judgments. That could create rather interesting results.

Now, I don't want to drag this out but the law seeks to go beyond that to insure that horrible things don't happen. What does one do with a tribal court judgment from which there is no appeal, which relates only to matters of contract or real property and which is in the amount of $2 million? Theoretically a State is supposed to give it full faith and credit in a State jurisdiction.

Chairman **Abourezk.** I think it raises a good question, both for Indians and for non-Indians; in fact, the question of appeal from a tribal court decision. I think it is one this Commission ought to face one way or the other.

Mr. **Taylor.** Senator, I find it rather difficult to quarrel with what we have done here. We are saying that these things are subject to review under fundamental fairness. We are quarreling with motherhood.

Chairman **Abourezk.** Peter, where do you find the review at? I think you agree there are certain circumstances where there is no review.

Mr. **Taylor.** In civil proceedings there is no review, yes, sir.

Chairman **Abourezk.** That is the only cases we are talking about right now. Where there is a review we don't have any disagreement. What we are talking about is providing a review for all cases.

Mr. **Wilkinson.** I don't see why review on appeal within the tribal court system is so special. It happens that in our system we provide for appeals. It happens that many other countries don't. If you have a small tribe that does not want to set up an extra level of appeals, it seems that our system of justice ought to be tailored toward that and permit this one level of decision so long as constitutional rights aren't violated.

Chairman **Abourezk.** Charlie, even in small claims courts there is a provision for trial de novo and even in municipal court or circuit court in most State jurisdictions. It is costly to litigate naturally but that is the discouraging aspect of it to keep the historic lawsuit from evolving, but there is one thing perhaps the Commission ought to face, that even Indian litigants, not only non-Indians, but even Indian litigants are entitled to go beyond one court when they feel like they can't find justice in that court. They ought to have some outlet.

Mr. **Wilkinson.** Shouldn't we leave this up to the Government? In other words, we have a tribe leader, a tribal council that is attempting to run its own reservation in the best way. They care about these matters as much as you and I do and the rest of the Commission do. They decide that with their resources being what they are that they want to provide a good, fair trial at one level only with no appeal. It seems to me that what this Commission wants to do is to respect that kind of decision, and not automatically require an expensive overlay of an appellate court system. That is why we suggest that it be permissive with the tribe. If there is a tribe that wants to set up an appellate court system then it should, but if the tribe decides, in its own conscience in dealing with its own people, that there should only be one level because the resources are best tuned to that, then it is our judgment that that tribal self-determination should stand.

Chairman **Abourezk**. If we followed your argument logically you would repeal the 1968 Civil Rights Act by saying that is an interference with the tribal courts' right.

Mr. **Wilkinson**. But I am not suggesting that and no one else is either.

Chairman **Abourezk**. But you are by saying that to add one more amendment would interfere with those.

Mr. **Taylor**. It would add one more interference, but we are talking about these large civil judgments and I think I made a misstatement. You asked if there was a right of appeal. My answer to that is no. But there has been access to the U.S. courts for review of actions of tribal government related to similar matters. I am thinking now of *Cheyenne River Sioux* v. *O'Neill* where the tribe got a civil judgment of foreclosure against a non-Indian's cattle that were on tribally owned land. I think he failed to pay his lease, or something like that, and they started to execute that foreclosure proceeding and the man went into Federal court on a complaint filed under the 1968 Civil Rights Act. He got his stay in that case. In fact, in that case the U.S. district court sent it back to the tribe for exhaustion of tribal remedies but indicated that it would take jurisdiction if a satisfactory solution was not worked out.

So there is a possibility of Federal court review.

Chairman **Abourezk**. There is a possibility and that is one case, but what I am talking about is setting up a procedure.

You can't pluck one case out of the air where some Federal court judge decided to take it. What about the other 800 who decided not to take it? You can't leave it to the judge. Either you do it or you don't do it. That is what we are talking about here. I want to ask the other Commissioners to express their views on it. The purpose of the discussion is to find out whether or not we ought to do it.

Commissioner **Borbridge**. Mr. Chairman, if I may ask a question of the staff? Basically you are saying essentially that the court systems which are established by various tribes provides adequate safeguards as far as the rights of the individual Indian or non-Indian are concerned.

Are you further saying that in all instances where a non-Indian is involved, assume that he has been treated unjustly, that there is recourse in every instance, even in fact if that recourse may not necessarily be available through an appellate procedure, within the tribal courts.

Mr. **Wilkinson**. No. I will stand corrected if anybody disagrees with this, but I believe that a normal contract situation, who owes $500 or a normal personal injury case, can't recover for $1,000, and that situation where no constitutional questions are involved, the act does not require any review by anybody.

So that, in other words, if you and I went into a tribal court over an automobile accident, then it is possible under the act that there would be no review by anybody. It would be a matter of fairness as to what went on in that tribal court.

Commissioner **Borbridge**. So we go back to my question, will you answer yes or no?

Mr. **Alexander**. Well, fairness is also a due process issue. You are talking about fairness, Charlie, and if it is a violation of due process, then it would be appealable.

I think we have to get a little reality. The situations that I know about where there have been a large number of non-Indians going into a tribal court is mostly in Hela River and this has been going on about 4 years now, and that court in that period of time has processed over 6,000 cases. It has not had one single action under the Indian Civil Rights Act.

We should not lose track of the fact that there are, in fact, tribal appellant systems in existence in some of the larger tribes. There are also special processes of review of tribal court decisions by a three-person panel of elders appointed by the tribal council. In the Apache situation, if you are a 25 CFR court, the Secretary of the Interior has appellate authority.

We are recommending that this appellant system be permissively developed by the tribes, that it be funded, and that there be an experimental period to try to see what kind of system will meet the tribal needs.

Commissioner **Borbridge**. Does this mean, Mr. Chairman, that where there is an appellate procedure that is established that the right of the defendant may be in better shape than where there is no appellate procedure. This is just a layman's question here.

Mr. **Alexander**. Procedurally, there may be, but I would say that the tribal courts generally are fairly informal operations today. I think Peter's use of the term "fundamental fairness" as far as applicability to those courts—they are not the terse adversary system with overtrained lawyers, if you will.

You are talking about a much more personalized delivery of justice system at this stage in time. We seem to be using standards from a very tight justice system where you have got a prosecutor with an investigative staff of 20 people, and a corps of defense attorneys. That is not what we are talking about at this stage.

Chairman **Abourezk**. John, are you finished?

Commissioner **Borbridge**. Just one other question, Mr. Chairman. Are we further stating that as relates to the establishment of the tribal courts, you would view this as simply another progressive step in the increasing sophistication of the operation of the courts by moving the tribes toward a permissive establishment of an appellate process, and that this may well take a little time to accomplish?

Mr. **Alexander**. We have described the tribal justice system as an evolving system. That is the fundamental concept. The answer to your question in short is yes.

I want to come back to something Peter said before, because I think it is pertinent here, and that is one of the principles, that we were talking about earlier, is that tribes would essentially be held to the standard that the powers that they were exercising are in the governmental interest of the tribe, and we are not talking about some left-handed kind of action.

Commissioner **Borbridge**. I object, as a left-hander as to the connotation——

Mr. **Alexander.** You have the equal protection rights to object.

Chairman **Abourezk.** Paul, may I come back to this one more time. Let's talk about any court system. The reason that appeals are provided from virtually every jurisdiction in the United States, and any civil—well, the only other civil country is England. There is appeal from the civil law courts in France, and the other Latin countries. There are appeals provided, I think, everywhere except the Soviet Union.

Appeals are provided for and I think they even have an appearance of an appeal in the Soviet Union, although it is pretty meaningless. The reason for that is that human beings are not perfect, and anyone judge who sits there with one viewpoint himself is never perfect. A lot of times they may come up with the right decision, and a lot of times they will come up with the wrong one. But that is putting a vestige of absolute power in the hands of the Government, to say that you can have a trial but you can't have any appeal.

The reason you provide for that appeal is to assume, first of all, that the trial court level may not be perfect, that he may be arbitrary, in that the appeal court itself might be arbitrary, at least you are given another chance at it.

I have to be very honest with you. It is not that I don't trust the tribal governments, I personally don't trust any damned government, including the Federal Government and the State governments, and I want every avenue of appeal that I can find.

I used to be a criminal defense lawyer in South Dakota. Every one of my clients that was convicted or defeated in a civil action I thought was done wrong, and I wanted to find somebody who would right that wrong. That is the purpose for my bringing up this appeal thing so much.

What you are saying is trust the tribal government. Where is the tribal government any more perfect than a State or Federal Government? It is absolutely not and you can't argue that.

Mr. **Wilkinson.** Senator, clearly you have got a point here that is fair, but my suggestion would be that rather than making mandatory an appeals system, rather than going that far, to make a provision that appropriations be available for an appeals system, that the appeals system be optional, and the tribes be strongly encouraged to adopt an appeals system because the fundamental fairness and the American Indian Policy Review Commission recommend a review of those procedures a few years down the line, rather than applying it to all tribes now.

Commissioner **Dial.** Mr. Chairman, I would like to concur with everything you said. I can't visualize any court system that has no procedure for appeal for an Indian or non-Indian beyond a tribal court. If I understand this argument, and this discussion has been going on for some time, I think there should be an easier way out, and an easier method for appeal for Indian and non-Indian.

Maybe I have misunderstood the whole subject.

Mr. **Parker.** Commissioner Dial, I think we have discussed a very basic point, and I think my evaluation of the arguments, going back and forth, is that when we are talking about a very limited number of situations wherein somebody wishes to bring an appeal from a judgment of the tribal court, the logical avenue to go to would be to a Federal court.

I would think that given the limited application of what we are talking about in factual terms, that there really isn't a problem with that. Now, what I think I am doing is conceding the point that Senator Abourezk is making, the point originally raised by Mr. Martone.

I don't think we can defend supporting a tribal court system that does not have a right of appeal. The right of appeal is not a constitutional right, but it is accorded in every court system in the country, and I don't think we can defend not providing a right of appeal.

There needs to be a lot of work done on this before we are at a point where we can define precisely what that right is, where it should be exercised, what is its scope, and what are the procedures. I think we are a long way from that.

Chairman **Abourezk**. Do you think the Commission—I am asking of the Commission members—should establish a principle that there should be some kind of an appeal from a court that previously had no appeal? Is that a fair principle or not? That is the question I have been trying to raise all afternoon.

Commissioner **Borbridge**. Mr. Chairman, I think it would be possible to do that in the perspective that we as a Commission see this as, call it an obligation, if you will, of the Federal Government to work with the tribal courts in the extension of tribal sovereignty so as to provide such an appellate procedure on the basis that it will accord an additional guarantee.

Once we do that I don't see any problems, really, with the rest of it.

Chairman **Abourezk**. All right.

Mr. **Parker**. I think we have taken direction from the Commission on this.

Chairman **Abourezk**. Does the Commission agree, or is there any dissent on that?

Commissioner **Whitecrow**. Mr. Chairman, I wholeheartedly agree. Under any system there must be an appeal and whether it be for Indian or non-Indian, as long as this Commission has provided for the establishment and continuation of tribal courts, and tribal government processes. I think very definitely it is a part of our responsibility to assure that there is an appeal process provided within this entire context.

Commissioner **Bruce**. I would agree with that. Does this mean that we are leaving it open as it stands now, unless we take some action? Is that right?

Mr. **Parker**. I think we have direction from the Commission. I interpret that we have direction from the Commission.

Chairman **Abourezk**. You will bring us back some language?

Mr. **Wilkinson**. Would it be acceptable to the Commission to permit tribes to permit the appeal to go to the tribal council if no formal appellate court is set up? The tribal council then to review for fundamental fairness.

Chairman **Abourezk**. If you want to get into specifics then I am going to push for a Federal district court trial or appeal to the Federal district court.

Mr. **Martone**. I think his suggestion raises another problem, at least in our tripartite system where you separate the judicial from the executive and legislative branches. It is a little peculiar to say that an appeal from the judicial branch of the tribal system shall be to its executive/legislative branch, the very branch which may be a party to the suit. It is just a blending and mixing of problems.

Clearly, the political branches of the tribe's government are going to have fairly strong feelings about some issues raised, and I can give an example. Paul Alexander mentioned the Gila River Indian Reservation in Arizona because of its location. I usually go through that reservation every week.

You can't go from Phoenix, Ariz., to Florence, Ariz., without going through that unless you decide to go a long way. I have been in the Gila River Indian Court. I was in the peculiar situation of representing an insurer of the tribe in an action brought by the heirs of a deceased Indian against the tribe, and against a tribal sheriff where that tribal sheriff ran over the tribal Indian while he was sleeping in the street, in a drunken condition.

The heirs of that deceased Indian brought an action against the tribe and against the tribal sheriff. Under our contractual obligation the insurer therefore had the duty to defend the tribe. The action was brought by the plaintiff first in the State court in Tucson. The case was dismissed because clearly the State court had no jurisdiction over a reservation Indian defendant and a tribe.

Action was then brought in the U.S. District Court for the District of Arizona, and at that time I was counsel, and I moved to dismiss that action for lack of Federal jurisdiction.

Since the matter was a tort arising on the reservation there was no Federal question, and there was no diversity of citizenship. The matter then went to the tribal court, and we found that the tribal court was geared for two things: Criminal offenses and domestic relations. They never had a case like this before. There were no procedures available. To even talk about the litigation——

Chairman ABOUREZK. Without going any further I agree with that. Putting it back in the council would not be the appropriate thing to do.

Commissioner BORBRIDGE. Mr. Chairman, I was just wondering, whether, instead of discussing proposals that we clearly don't intend to vote on, if we might simply refer this back to staff and ask them not to conjecture a lot as to what they might be coming up with later on.

Chairman ABOUREZK. That is it, go on to your next recommendation. We are on chapter six—Federal administration?

Mr. STEVENS. Yes, sir, we will start with the recommendations on pages 58 and 61. I want to tell the Commission that we want to talk about the recommendations. The Federal administration chapter has to be taken up next Friday, but we need to talk over the recommendations, the concepts, and the things we are trying to propose.

Mr. HALL. There are basically three areas that I would like to bring to the Commission's attention. The first is the Federal delivery system: How it functions, how it should function, and the specific recommendations that we have prepared for those pages 58 through 61.

We also have specific recommendations with respect to Indian employment and contracting preference. The condition of that currently and what changes should be made to improve it. There are two sets of them on pages 73 through 76 and 81 through 82.

A third area, which we do not have the specific recommendations prepared for, is the concept of the independent Indian agency. I am going to ask Pat Zell to talk about or explain the recommendations that have been prepared on the Federal service delivery system part of this chapter, keeping in mind that what we are talking about when we are talking about Federal delivery systems is some 13 Federal agencies administering 53 programs which are either specifically Indian programs, or which have set aside specifically for Indians, administering some 954 million Federal dollars.

There is an inaccuracy in the chapter on page 12 and page 13 in which the figure is quoted at $1.1 billion. That is a figure that came from a GAO source, which our research does not agree with.

In addition to that we are talking about the Federal programs which are not specifically Indian, or which do not have set asides for one, but in which Indians or Indian tribes may be eligible, or may participate, and on the same basis as other individuals or other Government units.

If you will turn, please, to page 58 and Pat: Do you want to start off with that first recommendation?

Dr. ZELL. As a matter of fact, the Commission approved this morning the first recommendation in relation to the tribal government section. There are 13 recommendations addressing the Federal delivery system contained herein. At least four of the recommendations are contained in the other sections of the report as they relate to the Indian Health Service, and the Office of Education.

So I will review those that are relevant to this discussion. Recommendation No. 2 is based on a trust relationship between the tribes and the Federal Government, the protection of tribal self-government, and the incursion of State jurisdiction on the delivery of Federal programs.

Thus, Congress should enact legislation establishing tribal governments as equal to State governments in the Federal delivery system of Federal domestic assistance programs. This would remove State jurisdiction of the tribal governments under the conditions that we discussed this morning.

Second, and following upon that, would be to guarantee the jurisdiction and independence of tribal governments. Congress should authorize the amendment of all enabling legislation, program acts, and administrative regulations of Federal domestic assistance programs, which require tribal governments to come under State jurisdiction in the delivery system of Federal domestic assistance programs.

Recommendation No. 4 was approved this morning by the Commission in relation to the status of tribal governments, and its inclusion in the Intergovernmental Cooperation Act.

Recommendation No. 5 addresses the Federal Program Information Act, a bill now pending in Congress, which set up a data base of Federal programs accessible to units of the Government and eligible applicants for Federal domestic assistance programs.

We feel that access to Federal program information is crucial to the use of Federal domestic assistance programs by tribal governors, and that passage of this act would allow tribal governments meaningful access to Federal program information.

Chairman ABOUREZK. No. 6: Pat, are you able to say that BIA should make available copies of 25 U.S.C. Can't the tribes get their own copies? It is not a very big deal. It just seems to me that they ought to be able to get their own copies some way.

Mr. Taylor. Mr. Chairman, may I make a comment? I know of a situation where a tribe had to hold a special powwow to raise $11 to buy a copy of Black's Law Dictionary.

Chairman Abourezk. They had to do what?

Mr. Taylor. They had to hold a powwow to raise $11 to buy Black's Law Dictionary.

Chairman Abourezk. That is the price of democracy.

Mr. Taylor. Under the statute right now, agency offices are supposed to have copies of all statutes relating to Indian affairs, and several other legal works, which I don't believe those offices are holding.

This, I think, would be a very inexpensive procedure. It is a way of equipping tribal offices to deal with laws and regulations, and for some tribes, really, the expense could be a strain.

Chairman Abourezk. But 25 U.S.C. is just one book.

Mr. Taylor. Then there is 25 CFR.

Chairman Abourezk. You dont' say that here, you say 25 U.S.C.

Mr. Taylor. In this instance that may be what is referred to.

Chairman Abourezk. As I say, that is not even worth arguing about, it seems to me, and it is not even worth putting in the report.

Mr. Stevens. Mr. Chairman, I think we are off point here, and that is our fault. I don't know entirely what is happening on this, but I know what I would do. It is what Congressman Yates was referring to in the last meeting.

I think that Indian tribes are expected to do things that the Federal Government does not do. Many of the executive departments and agencies, although they have the materials to work with, like the GAO person who was in my office the other day, and asked to look at the GAO manuals. I pulled them and I put my hands on them and I said, "Now, I am competent and you are incompetent, and that is the difference between you and me." He laughed and said, "Yes."

The Bureau of Indian Affairs, the Indian Health Service, and certain other departments—I think we have to change, possibly, the phrases in here, that Indian people have to have access to the rules. That is the real line. When they have the rules, when they have the regulations, and when they have the statutes then they will have access to the kinds of materials that they need to operate with. I think that makes a difference on whether a tribal government is incompetent. That is the point of it.

Chairman Abourezk. I don't disagree with that. The only thing I am saying is you have got a report here and we have all the heavy issues in the world, and there is one little section that says somebody ought to hand the tribe copies of 25 U.S.C.

What the hell, if the tribe can't get its own copies of 25 U.S.C. it can't set up its own court system, right, am I right or wrong?

Mr. Stevens. Right.

Dr. Zell. Well, as we discussed this morning—we were talking about the fact that many tribal governments do not have the financial resources necessary to support the basic operations of tribal government—I certainly think that this goes right in with that. The Indian people have a right to know, and have access to the laws which govern them, in this case 25 U.S.C. I really think this is pretty important.

Chairman **Abourezk**. Pat, I don't think 25 U.S.C. annotated, even if you had an annotated, wouldn't cost over $20. Is there a tribe in the country who can't raise $20?

Dr. **Zell**. I would imagine there are.

Chairman **Abourezk**. Do you know which ones?

Dr. **Zell**. I would say many of the southern California tribes.

Chairman **Abourezk**. They can't raise $20? I have been through southern California and I think they could, and 25 U.S.C. is available from the best publishing companies.

Mr. **Hall**. If I may suggest a solution to this, Mr. Chairman? I think the more crucial one is the meaningful one that follows, and that is the complete revision and publishing of the BIA maual, which is now unavailable regardless of how much money a tribe might have.

Chairman **Abourezk**. That is a different question.

Mr. **Hall**. It would seem to me that, perhaps, it could be handled in the context of the bureau or the agency supplying technical assistance and necessary materials to tribes to contract and assume certain responsibilities, and included in that would be the manual and the one other resource would be there.

Chairman **Abourezk**. That is fine. I don't disagree with that, but just to see this pop out, putting this in the report, is saying furnish one book is like putting in the U.S. Constitution a prohibition against spitting on the sidewalk. I am sorry but that is the way I look at it.

Congressman **Meeds**. I tend to agree with that, Mr. Chairman. This kind of recommendation is going beneath the dignity of the report. 25 U.S.C. is not going to cost very much, and the chairman made that point and most tribes can afford 25 U.S.C.

Is there anywhere where we have the total cost of this program, if it were implemented? Has anybody done a cost analysis of the recommendation? Do we have that anywhere?

Mr. **Hall**. On the entire report or this chapter?

Congressman **Meeds**. Of the entire report.

Chairman **Abourezk**. There is no way, because the recommendations don't get that specific.

Congressman **Meeds**. Well, I saw some pretty specific recommendations that looked to me about 20 billion dollars' worth.

Chairman **Abourezk**. Some of them are specific, but not all of them, so you can't tell.

Congressman **Meeds**. Has anyone done a cost analysis of the ones you can calculate?

Mr. **Hall**. If I might respond? Mr. Meeds, the Commission spent close to a year trying to determine the cost of the Indian programs as they now exist—working with the agencies—and we were unable to do so beyond the specifics that we identified in here, of those programs which are nailed down as exclusively or with Indian set-asides.

There is no way that we have been able to determine to date what the current cost is, let alone what our proposals would be.

Congressman **Meeds**. I would think, Mr. Chairman, that it would be very valuable for us to include in this report the best estimate by the staff as to what the total cost of the proposals are.

Chairman Abourezk. I would be opposed to that.

Congressman Meeds. Why is that?

Chairman Abourezk. On political grounds. I think as each program is brought up again in Congress, that is the time that the Budgeting Act will have to be presented to the Budget Committee, and I think to put an overall price on this would first of all be impossible. It would be inaccurate, to say the least, because it is the roughest estimate that may or may not be correct.

I don't know if staff is equipped to do it. I would be opposed to it, and if you want to——

Congressman Meeds. Mr. Chairman, I would like the opportunity to make a motion.

Chairman Abourezk. Sure, go ahead. I think we ought to vote on it.

Congressman Meeds. I so move, Mr. Chairman, that included in this report be the best estimate of our staff as to the cost of the proposals contained herein if implemented.

Chairman Abourezk. Am I given an opportunity to debate on that?

Congressman Meeds. Mr. Chairman, you have every opportunity, sir.

Chairman Abourezk. I would say that primarily on the grounds that the staff is not equipped, either with regard to personnel or with regard to making such an estimate, I think the motion ought to be tabled.

I move to table the motion and I ask for the——

Commissioner Bruce. I second that.

Chairman Abourezk. All in favor of tabling raise their right hand. The vote is six.

All those opposed to table it. Six to one in favor of tabling.

Commissioner Borbridge. Mr. Chairman, is it appropriate to comment on the reason for so voting? May I comment on the action?

Chairman Abourezk. Either one.

Commissioner Borbridge. All right, fine. I certainly agree with the principle, as we all do, of fiscal responsibility in seeking to determine the cost estimate to actions which are anticipated.

In this instance, however, I am very fully aware, of one aspect of our operations. That is, we have discussed with staff the tightness of this scheduling, we know that some of the staff are leaving, and if there was a responsibility to be borne by staff for determining such costs, such a decision should have been made by this Commission at an early time when people were initially brought on board. Then we would have had such a capability.

I think to ask that such action be undertaken at this time is somewhat unrealistic. I don't disagree with the principle, I just don't feel that we can accomplish that under current circumstances.

Chairman Abourezk. The thing is we are not even authorizing or appropriating here either. I just want to point that out.

What we are doing is making policy recommendations and as we bring each one of these recommendations up to the Congress, at that time the budget impact will be assessed by the committees of Congress.

Commissioner Whitecrow. Mr. Chairman, as I understand the BIA management review process—the budgetary process that is involved in that particular management review—I believe that it points out in here in which the total budget would be developed agency by agency. In this regard I have opposed this particular point on previous occasions in regard to determining what is the total cost to provide fulfillment of treaty obligations.

The BIA management review and the establishment of budgetary processes and planning procedures, I believe, spell out that requirement, that perhaps will give us this kind of a total cost for all Indian programs. But I am sure it will be another year and a half or 2 years before that process is really firmed up

Congressman **Meeds**. I just got another idea, Mr. Chairman. I think probably GAO could give us an estimate of the cost of this program breakdown. It might be better than if we did it ourselves.

Mr. **Hall**. I don't know, Congressman Meeds, whether you have, if not I will certainly make available to you a copy of the GAO report that was prepared August 28, 1975, commonly referred to as the Fannin report because Senator Fannin requested it.

The figure that is set forth in that report, and we relied on the backup information to some extent in preparing our backup information to this chapter, cites the current cost for Indian programs somewhere between $1.1 billion and $1.5 billion. But the report readily points out that all the figures they had came directly from the agencies. They did not verify them, and we know for a fact that in some cases they are inaccurate.

So, as far as I am aware, this report is, despite the fact that it is over a year old, is probably the most comprehensive and the best job done, but it has three shortcomings.

Mr. **Stevens**. Mr. Chairman, there is a later recommendation that we want to deal with. It has to do with the accountability and just adding onto that, we have spent some considerable staff time trying to get a better handle than GAO, and we were not able to do it because the information is not available.

The Federal agencies, like for instance the Bureau of Indian Affairs, do not put out a program report, or some kind of report that accounts on how they expended money. And so you are left to estimations.

This whole thing that the GAO started with, Bureau of Indian Affairs estimations and other Federal departments, making estimates some time ago, and that studies have been made off of this, and they don't know what the Federal appropriations are.

By they, I mean the Office of Management and Budget, or any of the departments. They have no knowledge. They could not produce the figures.

It was requested by the President's office last year, and they couldn't come up with it.

Chairman **Abourezk**. I would like to move to recommend, on recommendation 6, to delete that 25 U.S.C. Is there objection to the amendment? If not that last sentence to No. 6 is deleted.

Do you want to go on with No. 7?

Dr. **Zell**. Recommendation 7 is addressing the problems that have been encountered under Public Law 93–638 by tribes, as well as the problems encountered in a plan for Federal domestic assistance programs, and setting out as many as 10 to 15 different accounting systems required by different Federal agencies.

The administrative burdens on tribal governments, which they are ill-equipped to deal with, we feel as an internal tribal government governing measure, that the appropriation of funds to allow preparation of operations and procedures manuals to be used by tribal governments in their administration of tribal government affairs would be a great boon to the governing capacity of a tribal government.

These manuals would include operations models, presenting alternative systems for financial management, accounting personnel policies and procedures, management information, and organizational structures.

This would be a significant step in preparing for Public Law 93–638 contracting, and is not now realizable under the training and technical assistance moneys allocated under the Bureau of Indian Affairs for such purposes.

Commissioner WHITECROW. Pat, is this not already allowable and provided for in section 104 of Public Law 93–638?

Dr. ZELL. Our analysis of section 104 moneys allocated under Public Law 93–638 of the capability of most tribal governments to finance basic operations of a full-time tribal chairman, the tribal council, the hiring of a tribal administrator or attorney, leads us to believe that section 104 money does not only not go far enough but most tribes would need to put that money into more immediate tribal government operations.

Commissioner WHITECROW. In other words, this is just an expansion of that section 104 money, is that correct?

Dr. ZELL. Yes; it could be.

Commissioner WHITECROW. If it could be an expansion of that then why don't we just say that in this aspect? Expand that particular line item budget for section 104, to allow this and, especially as we bring about the nonrecognized tribes into this whole process. They too will have to have moneys to do exactly this.

So, by expanding section 104, the line item money, would it not accomplish this very same thing?

Dr. ZELL. Yes. I would add with the caution that the allowable costs now detailed in the regulation under section 104 of Public Law 93–638 be expanded or at least clarified to include all of these activities, and the preparation of such manuals.

Commissioner WHITECROW. Do we say it like that?

Dr. ZELL. Yes.

Mr. STEVENS. Mr. Chairman, I want to point out that in these there should be some kind of a caveat unfriendly to the expansion of appropriations. I think with that we have to tie in the idea about Government being efficient. We will say, in some of our other reports, that the Bureau of Indian Affairs and Indian Health Service have commandeered that program.

I consider administration could be a practice in fundamentals. Now, Public Law 93–638, particularly as it relates to section 104, is to me a real study on how a bureaucracy takes a concept of self-determination and turns it into a BIA program. What I am talking about is the Bureau has taken money for administrative purposes Indian Health Service, not too long ago, transferred money for salary increases.

I think that Congress has to stipulate on these types of things. Like if we use Public Law 93–638 for this purpose, and I think it could be done. Congress has to stipulate amounts to be specifically used for operations manuals, and such, hoping that the Bureau will put it in their general administration, and that Indian Health Service and the Bureau of Indian Affairs both will put it into salary and positions.

I don't know how many people have talked to a tribe that got some of that section 104 money, but we are trying to ascertain the breakdown of that right now, and it is mighty slim.

In the central offices here and the area offices have plenty of it, and recently the Colville Tribe was in an argument between the area office and the central office of the Bureau of Indian Affairs, arguing about who had the section 104 moneys, and they never did settle that.

Congress should stipulate on those kinds of things. The other thing, that is slightly related, is that Congress has to specifically ask that a line be drawn between administration and programs. Curiously enough, the Department of Labor does with their CETA; their positions are separate and apart from the moneys stipulated to be delivered to Indians.

The exact opposite exists in employment assistance, for instance, which is predominantly federally employed.

Commissioner BRUCE. Jake, are you asking whether this could be action to section 104?

Commissioner WHITECROW. Yes.

Commissioner BRUCE. Is it possible that what we are talking about here is systems, and can that be added to section 104?

Dr. ZELL. Yes. I will stipulate again, though, that the recommendations that we discussed this morning in terms of the population formula funding under section 104, and the small tribes incentive program, that there probably should be more money allocated to the small tribes incentive program.

So they, once again, suffer under the loss of allocations by population.

Commissioner WHITECROW. Mr. Chairman, maybe that should be an amendment to Public Law 93-638. Maybe this should be one of our recommendations to amend Public Law 93-638 to provide this.

Dr. ZELL. I think it could be an amendment to the regulation rather than the act.

Mr. HALL. I don't think, and correct me if I am wrong, Pat, I don't think that we are finding a problem with the statutory language of section 104 here.

What we are finding is a problem in the way it is being interpreted, and the amount of money that is being made available.

Commissioner WHITECROW. That is what concerns me. In the past I have seen many regulations develop and even Congress is unable to turn over those regulations.

In my past experience, when Congressman McSpaden from the State of Oklahoma very pointedly brought to my attention that he could expend numerous days, hours, weeks, months, or what have you, in the legislative development of a public law. Then once the bureaucracy finished with the regulation process, there was no sense to that particular delivery mechanism as to finding out the legality of the legislative process.

So here is what I am saying: Section 104 is definitely not being used properly out there with the various Indian tribes. There is not enough money in that particular section to really do the job that it should be doing.

The bureaucracy, it is true, has established many new job positions through section 104 money. So what I am saying here: Perhaps we should make a recommendation to the Congress to amend Public Law 93-638 to guarantee this statement, so that we can ultimately change the regulations in this matter.

Now, am I too far off base here?

Dr. **Zell.** I would think that we might have a recommendation here that the regulation be amended to expand the definition of allowable cost, and that appropriations under section 104 be increased so that if a tribal government chooses to use this section 104 money in this way it would be able to do so.

Mr. **Stevens.** I would like to make a point. I would like again to point out the CETA program. I am not all that much of a fan of it, but at least in the legislation it is stipulated what was to be delivered, but some of my friends who work over there think they are doing it at their discretion. The fact of the matter is that they are delivering that money direct to those tribes because it is stipulated by legislation.

I believe that there is more than ample cause to have oversight hearings on Public Law 93-638, and I think it goes beyond the kind of discretion that we are looking for here.

I think that Congress should actually consider amending that legislation so it is rather stringent and rather explicit about what the administration is to be permitted. I will give you an example that provided for grants, because they needed granting authority, and they turned it into contracting BIA style.

All that needs to be done is the tribe needs to write a proposal about an assessment of its own needs—it needs the constitution rewritten or whatever it is—make the proposal, attach the amount of money that it needs, and then they give them the money for it. That is what needs to be done.

And what happened, I believe, is that discretion was allowed and then they turned it into a program, and they are doing that. As a matter of fact, one of my friends told me it was their duty because they were the trustee to hire people to handle that.

I think in Public Law 93-638, possibly, you might consider a much broader recommendation.

Commissioner **Deer.** Mr. Chairman, I would like to follow up on this point. In looking over these recommendations, I don't disagree with the major substance of both of them, but I think we are getting bogged down in some unnecessary details. I am just wondering if these could be framed in a larger policy perspective and be summarized?

Chairman **Abourezk.** That is a good point. Our purpose is to try to establish policy but not to write every line. Detail seems to be piling on detail.

Mr. **Hall.** There are two ways that this recommendation could be framed: (1) is a recommendation to the executive to carry out section 104 in the manner in which we are talking about; or (2) a recommendation to Congress for specific amendments to section 104 which insures that these are carried out.

I am not sure that we are in a position right now to select one of those.

Dr. ZELL. We are going to discuss Public Law 93-638 later in this chapter.

Chairman ABOUREZK. In following up what Ada just said, I think it is probably very appropriate to bring up in the narrative and in dicta what we are saying here, that the administration has not allowed the Indian tribes to accomplish the objectives of Public Law 93-638, they have not given them manuals, they have deprived them of participation, and so on.

In the reading of a chapter like that, I think the congressional committees can pick up on that rather rapidly, and have oversight hearings and ask questions on it about why they don't furnish 20 United States Codes, or why they don't give them the manuals that they need, and so on.

I don't know if I'm leaning on this too much myself, but aren't we just overdoing it somewhat to account for every detail and say that they have got to do this and they have got to do that.

Mr. STEVENS. We could possibly consolidate these two. For instance, that the Bureau is in violation of the administrative procedures related to the manual. Some kind of recommendation has to be made to the executive branch to ask them to provide this.

These tribes have been operating for 40-some years, and yet they don't know the rules. I was able to begin work on a tribal constitution because I was lucky enough to almost subpena the Bureau to give me a section that has to do with tribal government.

No tribe has access to that, unless we can give them subpena power. Mr. Chairman, I am submitting that if it isn't explicit, at least it is implicit, that the Bureau of Indian Affairs and the Indian Health Service and others are denying regulations, manuals and all that, so that they can keep the tribes in the kind of condition they are. We should rephrase this in such a way to get right on point there.

Chairman ABOUREZK. You ought to ask yourself, when you are rewriting this material: Are we establishing policy, or are we filling out blanks?

Let me interupt for a moment. I am told that this is Paul Alexander's last day with the Commission, is that right?

Mr. ALEXANDER. It is also Donald Wharton's and Pat Zell's.

Chairman ABOUREZK. Don, are you on loan?

Mr. WHARTON. No, sir; I work here.

Chairman ABOUREZK. Oh, you are going to work for the Department of the Interior?

Mr. WHARTON. Yes, sir.

Chairman ABOUREZK. Where are you going, Pat?

Dr. ZELL. Back to Santa Fe.

Chairman ABOUREZK. Santa Fe, all right. I just want to say before we go any further, before we forget to do this at the end of the day and to rush, that on behalf of myself and I am sure the other members of the Commission, we want to express our gratitude to Don Wharton, Paul Alexander, and Pat Zell, for their very dedicated service to the Commission. We appreciate it very much.

In the case of Paul, our thanks goes also to the Civil Rights Commission, he is on loan from them, and we are not paying Paul, is that right?

Mr. ALEXANDER. Only part of his salary.

Chairman ABOUREZK. In spite of the fact that we paid Pat and Don a Commission payroll allowance, we still want to thank them. We really do appreciate your service, all three of you, and anybody who would like to say anything please feel free.

Commissioner BORBRIDGE. Mr. Chairman, I certainly want to join you in that, and comment further that I consider their work outstanding, and their willingness to respond at all times to all questions as being representative of the best kind of standards that I have always hoped to see in a staff with which I might be associated. I certainly appreciate their dedication.

Commissioner DEER. I certainly concur with you, Mr. Chairman, and with John, and your comments about the work of Don, Paul, and Pat. I would like to say, in addition, that it is a pleasure to see the expertise and the dedication in the exercising of our task.

Commissioner WHITECROW. Mr. Chairman, what more can you say, other than this: What a wonderful job! Thank.

Commissioner DIAL. Mr. Chairman, I concur with all that has been said.

Commissioner BRUCE. So do I.

Chairman ABOUREZK. Then I will just announce that the vote is five to four in favor of happy returns and all of that.

Now, go ahead, Pat.

Dr. ZELL. Recommendation No. 8 has been covered in the health chapter, and was adopted by the Commission yesterday. Recommendation No. 9 addresses the Joint Planning Simplification Act which now has no appropriations attached to it, and the Commission recommends that Congress should appropriate such funds necessary to effectively implement the Joint Funding Simplification Act.

Recommendation No. 10 was covered and adopted by the Commission this morning, in the education section of the report, as well as recommendation No. 11. Recommendation No. 12 reads: Congress should enact Senate bill S. 2175—Public Participation in Government Proceedings Act of 1976, commonly known as the Kennedy-Mathias bill, which would authorize $20 million to assist the preparation of expert testimony and the travel of expert witnesses in public and Government proceedings affecting the public good for those citizens or groups who cannot afford their own counsel.

Chairman ABOUREZK. Are you on page 61?

Dr. ZELL. Yes.

Chairman ABOUREZK. You were reading something that we don't have.

Dr. ZELL. I was just explaining it.

Chairman ABOUREZK. All right.

Dr. ZELL. Recommendation No. 13, is in line with the Mathias bill—the concepts embodied therein. I just explained that the Secretary of the Interior has the authority to amend the rules of procedure of that Department to provide compensation for a participant in rulemaking and adjudicatory proceedings conducted by the Department of the Interior, including public and formal hearings conducted on rulemaking procedures.

It is our recommendation that the Secretary of the Interior, under existing authority, undertake the amendment of the rules of procedure of the Department of the interior.

Mr. STEVENS. Indian employment and contracting preference.

Mr. HALL. Page 73, under recommendations where they start.

Mr. FUNKE. The first part of the Indian employment preference section just deals with a brief historical and legal overview of past preference legislation. The failures that have been with the past preference legislation, and it details the Indian Reorganization Act as it was designed to correct the failures of the seven pre-IRA preference statutes.

Despite the careful drafting of section 12, of the IRA, it has still failed to correct the deficiencies of pre-IRA preference laws because the agencies have failed to fully implement it.

Section 12 of the IRA directed the Secretary of the Interior, and I should also point out that this is applicable to the Secretary of HEW with regard to the Indian Health Service, to establish standards of health, age, character, experience, knowledge and ability for Indians who may be appointed without regard to civil service laws to any positions in the Indian service—which is now the Bureau of Indian Affairs and the Indian Health Service.

It also provided that such qualified Indians shall hereafter have preference in employment within said agencies in all positions. The purpose of this was to get away from civil service laws which were preventing Indians from getting into positions within the Indian service, and it directed the Secretary of the Interior to set up a separate Indian career service, which has never been implemented, and the Civil Service Commission is continuing to apply civil service requirements to the appointment of Indians in direct contradiction of the mandates of section 12 of the Indian Reorganization Act.

The recommendations are, No. 1, and this is on page 73, "Congress should appropriate sufficient funds to establish a separate Indian career service as mandated by section 12 of the IRA."

An additional Indian career service recommendation is that the Indian career service should develop standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed without regard to civil service laws to the various positions maintained now or hereafter by the Federal Indian Service in the administration of the functions of the services affecting Indian tribes.

The Indian career service should be developed without regard to the current standards illegally being imposed by the Civil Service Commission, and should be designed to take into account the cultural environment, life, knowledge, and skills of Indians obtained outside the standards of formal education, as well as other practical requirements necessary to fulfill such positions.

One of the other primary failures in getting into the Indian Service—which has continued today—is the fact that within the Bureau of Indian Affairs there are no specific recruitment or training programs for Indians. The total number of Indians employed in the Bureau of Indian Affairs is less today than it was in 1951, and the Indians that are employed in the Bureau are concentrated in the GS-7 and below grade levels—65 percent.

In 1974. only 56 percent were concentrated in those lower grade levels, so in the last 2 years, the overall effect has been a rapid deterioration of the quality of jobs which Indians have had within the Indian service.

So, recommendation No. 4 is designed to correct that by providing that a division of recruitment and training be coupled with the Indian career service, which would be responsible for identifying training funds as an identifiable budget line item, which they are not at the present time. They are mixed in with general program funds, and supervisors are generally reluctant to spend program funds for any types of training programs.

This recruitment and training program would also develop and operate an Indian development program, institute a program to educate managers, supervisors of EEO and Indian preference rights, to place special emphasis on developing avenues of potential recruitment of qualified Indians, projecting future manpower needs in the Indian service, and development of management skills for the development and training of Indians to make sure that they have adequate upward mobility. At the present time there is no upward mobility program, or procedure within the Bureau of Indian Affairs.

We recommend that the Indian career service be initially set up by a body outside the Bureau of Indian Affairs, and we have two alternate proposals at recommendation No. 5. The first being that a congressionally established Indian career service commission be established to set up the training and recruitment, and also the personnel for the Indian career service.

The other alternative would be that an executive task force be established to set up such a service.

Recommendation No. 6 is that whichever body—the task force for the Indian career service commission—is established to set that up, that they have authority under Public Law 93–638 to contract out with Indian enterprises for developing certain aspects of that personnel and training and recruitment program.

Recommendation No. 7 deals with the Indian career service assisting tribes setting up their own personnel systems and that can be tied into section 104 of the Indian Self Determination Act providing technical assistance to tribes for tribal government development.

Once the Indian career service has been developed by either the Indian service commission or the special task force, it could then be transferred to the Indian service, whether that is a new agency or remains in the Bureau of Indian Affairs, it would become an integral division within the Indian service.

Assuming a new Indian agency is established, and all Indian programs under the Federal Government are transferred to that new agency, then the Indian career service would be applicable to the filling of all those positions within that agency.

In the event that certain Indian service type programs are not transferred into the new Indian agency, then section 12 of the Indian Reorganization Act ought to be amended to reflect the recent development of Indian service programs being developed in agencies other than the Bureau of Indian Affairs and the Indian Health Service.

The Indian career service would remain the primary agency responsible for developing standards in those other agencies, and they would coordinate much like the Civil Service Commission presently coordinates with all the other agencies throughout the Federal Government, developing those standards, and for developing training and recruitment programs tailored to the needs of that agency.

At the present time the Indian Reorganization Act does not provide for any adequate legal remedies for violations of Indian preference rights. There is no award of back pay, attorneys' fees or costs if an Indian's employment preference rights are violated, and he is successful in litigation.

Title 7 of the 1964 Civil Rights Act provides for payment of these expenses, for violations of other Federal employees employment rights, and we recommend that the Indian Reorganization Act be amended to provide like recovery when they are litigating their employment preference rights.

It is recommended that Congress hold oversight hearings on a regular basis to determine the adequacy of implementation of the Indian career service, and the training and recruitment and advancement of Indians within the Indian service.

There has been a great deal of confusion with regard to the existence of the six pre-Indian Reorganization Act preference statutes in terms of their application in conjunction with section 12 of the Indian Reorganization Act.

Therefore it is recommended that these pre-Indian Reorganization Act preference statutes be repealed so as to avoid that confusion. And, if those pre-Indian Reorganization Act statutes are repealed, then section 12 of the Indian Reorganization Act will have to be amended so as to be made applicable to all Indians as defined by section 19 of the Indian Reorganization Act. At the present time the Department of Interior takes the position that unless the Indian is a member of an Indian Reorganization Act tribe, then Indian Reorganization Act preference is not applicable to him.

This would provide for uniformity in the application preference to all Indians, whether they are members of Indian Reorganization Act tribes or not. That concludes the Indian employment preference, that is section B. Next is Indian contracting preference.

Mr. HALL. The recommendations start on the bottom of page 81.

Mr. FUNKE. I would like to change the format a little bit of the recommendation that is found on the bottom of page 81. One of the major problems encountered in contracting preferences is the lack of understanding on behalf of all the other agencies other than the Bureau of Indian Affairs, of the scope of section 7(b) of the Indian Self-Determination Act.

Section 7(b) provides that any contract, subcontract, grant, or subgrant pursuant to this act, the act of April 16, 1934, as amended, and any other act authorizing Federal contracts or grants to Indian organizations, or for the benefit of Indians, shall require to the greatest extent feasible: (1) preference and opportunities for training and employment in connection with the administration of such contracts or grants, shall be given to Indians; (2) preference in the award of subcontracts and subgrants in connection with the administration of subcontracts and subgrants shall be given to Indian organizations and to Indian-owned enterprises as defined in section 1452 of this title.

There is a great deal of confusion within the Federal agencies concerning the language "any other act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians."

One of the primary recommendations would be that Congress clarify what that language means, and the applicability to all other Federal agencies. Based on the legislative histories that we have done on the act, and the plain reading of the act, we interpret that act to apply to all Federal agencies which have contracts or grants which are going to, or are for, the benefit of Indians.

We recommend that Congress direct those Federal agencies to amend their Federal procurement regulations and begin implementation of preference in the award of such contracts and grants.

Chairman **Abourezk**. Is that it?

Mr. **Funke**. Recommendation No. 8, at the bottom of page 82, states that a national bank association should be created. It is supposed to be a national trade association.

Chairman **Abourezk**. What does it mean when you say a national bank association?

Mr. **Funke**. It should be changed to a national trade association.

Chairman **Abourezk**. Who are you telling to organize this association?

Mr. **Hall**. It is my feeling that the recommendation is not aimed at Congress or the executive but rather should probably be put in the narrative as a recommendation to the Indians. Is that correct?

Chairman **Abourezk**. I don't think it belongs in the report. It doesn't establish Federal policy.

Is there objection to deleting section 8?

Commissioner **Whitecrow**. Mr. Chairman, I hesitate to delete it completely. I would want to assure that it is in the narrative.

Chairman **Abourezk**. Delete it from the recommendations and put something like it in the narrative.

Mr. **Hall**. Yes, sir.

Chairman **Abourezk**. Which is fine.

Commissioner **Bruce**. I think it is already underway somewhere.

Mr. **Hall**. It can just be mentioned in the narrative as a good idea to implement this, it is probably the way it should be dealt with.

Mr. **Stevens**. The recommendations on pages 92 and 93: You were just given a few sheets. I want to say that the text related to this is not here.

Chairman **Abourezk**. Is this a new chapter, Ernie?

Mr. **Stevens**. No; it is a part of Federal administration—pages 92 and 93.

Chairman **Abourezk**. All right.

Mr. **Stevens**. The preceding pages from 83 to 92 are kind of a rationale, they are not the text, because the text isn't finished, but it is a discussion of the independent agency, and I thought you would want to look that over.

The recommendation is that Congress should enact legislation creating a Department of Indian Affairs. Initially this new agency would be comprised of the Bureau of Indian Affairs, removed from the Department of the Interior, and the Indian Health Service.

It should also be comprised of the staff who function as the Division of Indian Affairs in the Solicitor's Office of the Department of the

Interior, and those offices and personnel in the Department of Justice which are devoted to providing legal representation for Indians, and Indian tribes. These should be consolidated.

The Office of Trust Rights Protection in a newly created department as set forth in chapter 4 of this report: I would like to say that related to this recommendation that there are other parts of Federal departments that might very well be included here, but I believe that those should be examined by the Congress, and by the executive branch during the time in which they are considering this legislation.

Chairman **Abourezk.** All right. The Government Operations Committee in both the Senate and the House are considering the Carter reorganization plan. Ralph Reeser, have you been following that department reorganization plan?

Mr. **Reeser.** It wouldn't authorize any new independent agencies—you couldn't use that act.

Chairman **Abourezk.** I don't mean that. What he is asking for—what the committees of the Senate and the House are doing, are providing the procedure, and I think if I'm not mistaken the procedure says that Carter will provide a reorganization plan to both Houses of Congress, and that there will be the right of veto. If they don't veto it within a certain number of days it goes into effect automatically.

I think this is a matter of form again and we ought to say here that the Executive should provide a plan according to the processes agreed upon by the Congress to the Congress, along the following lines: Make recommendations to the Executive, then I think you can also say in the absence of that, Congress should enact legislation to make this come true. I think it would be just a better thing to do because that is the way things are moving now so far as the executive reorganization is concerned.

Mr. **Stevens.** What we would do is amend where it said the executive branch, we would change the language there because that is what we are talking about.

Chairman **Abourezk.** Ernie, where you say Congress should say that—I think you could say the Commission recommends that the administration prepare a reorganization plan along the following lines, or something like that. You can smooth that out.

Also, I would like to make another suggestion. As you say, including initially the new agency would combine the Bureau of Indian Affairs, Indian Health Service, staff and function of the Division of Indian Affairs in the Solicitor's Office, and I think you should say that it should include but not be limited to these agencies.

That means you leave it wide open for HEW and HUD and to bring in the Indian desks of those, is that agreeable to everybody? In that way you don't shut off bringing in the other ones.

Commissioner **Bruce.** Did we ever go into the situation of the inclusion of the other Indian agencies within this separate Department of Indian Affairs?

Mr. **Hall.** The way we currently have this concept, Commissioner, is that the new agency would start with the move of the BIA and the Solicitor's Office of Indian Affairs and Justice.

Beyond that IHS, and beyond that there should be some study of how many—if any, or of all—of the other Federal agency programs in Indian affairs should be moved into this new agency. You may want to move all, you may not want to move any, or you may want to move some.

Chairman Abourezk. Who should do the study, Gil?

Mr. Hall. I am not sure what you have there now, but the concept of the way we are thinking about was one that the White House could do in terms of a special task force and make recommendations to Congress.

Chairman Abourezk. If you do it the way we suggested a minute ago you could strike No. 2, the congressional recommendation and No. 1 the executive recommendation. You have done it all in what we have just talked about: The administration should prepare a plan, including but not limited to combining the functions of all these offices.

Commissioner Bruce. I think we are having the same problem in all the agencies. Agriculture is fighting for its place on the lower end of the stick, you know, the Indian part of it.

We ought not to eliminate the fact that they are being brought together, if that is possible.

Mr. Stevens. That would be part of an examination by the executive branch—that is what we are saying.

Now, we are saying logically the agencies that we named would be right up there in front, then the executive branch would determine the rest. For instance, with the Office of Native American Programs, would it be the R. & D. section of the new agency, or would it stay in HEW? The ETA in the Department of Commerce—would that be changed, would that be part of the economic development, or whatever the name of the division is.

Chairman Abourezk. Well, that is part of the study you are talking about——

Mr. Stevens. I am answering his question, sir, that is what he just asked. He wanted to know how they would do that.

Mr. Hall. Part of the suggestion to the Executive is the study also would be a time schedule for transmission. Obviously it is not going to happen overnight.

Mr. Stevens. Mr. Chairman, page 86 on, I wanted to bring the Commission's attention to a "for instance type of procedure" that the Interior Department, for its purposes, could embark on.

Chairman Abourezk. Ernie, before you do that, can we act on this particular thing here? I am offering as an amendment what I suggested a minute ago, and also the relation of recommendation No. 2 for Congress, and recommendation No. 1 for the executive branch down below that. The features of that would be included in No. 1 above. Maybe you can bring the exact language back to us at the next meeting, and we will just look it over and approve it. Is that amendment agreeable to everybody? Without objection the amendment is adopted.

Commissioner Bruce. Mr. Chairman, may I ask you a question? Do the congressional committees have a copy of what we are recommending as a Policy Review Commission?

Chairman Abourezk. They will have.

Commissioner Bruce. You know, I am very much disturbed. I thought we had briefed the transition people on a number of occasions, not only our staff but also some of us as Commissioners. Now I discover that very little of this is known in the White House.

Somewhere the whole thing has slipped through the cracks, and now a new Secretary of the Interior is dealing with the BIA staff, doing the letters for them and asking and checking with them constantly. What is it? What is it going to be?

You know, as we have proceeded, some of us have been very much concerned that we never did subpena anybody.

I received calls last night saying "you guys aren't too smart, you could have subpenaed any agency people, and you didn't. It is a misunderstanding of the power authority, and so forth, that this Commission has.

Now some agencies are saying, "we didn't have to work with you at all." I am concerned about that, as we move into these final phases. I don't know what we can do about it at this time, but I hope this administration soon will move to put into effect some of these ideas.

We are talking about the abuses by the Bureau of Indian Affairs but a lot of times you are talking about changing the Bureau rather than the separate agencies, and I am very much concerned about the entire question.

Chairman **Abourezk**. We can both make the agency separate and change it at the same time.

Commissioner **Dial**. Mr. Chairman, how aware are the people in transition? How aware are those people of the Commission's work?

Chairman **Abourezk**. The transition people in Interior were extremely aware because Ernie Stevens practically lived with them, didn't you, Ernie?

Mr. **Stevens**. Yes.

Chairman **Abourezk**. And we gave them copies of everything we had completed at the time.

Mr. **Stevens**. Mr. Chairman, I think one of the problems that there is over there, and it is because they are new, and I don't know however we do it, I guess when somebody is trying to start a business they are a little bit reluctant to take advice they are not familiar with.

But I think the problem we are having right now is they haven't hired any Indians yet, and I did complain to somebody in the White House, and I said, "this is ridiculous, why don't you at least hire one Indian who knows what is happening, to give you some advice?"

I think that is a major problem. Hopefully, they are going to solve that early on, but that is one of the problems, that is why they have to go over to the Bureau to get advice because of those Indians over there, such as they are.

Commissioner **Dial**. Mr. Chairman, another point. Even if they are new, last evening they spoke of a number of blacks and the number of chicanos getting office. I don't recall the number, but they never mentioned the American Indian. And frequently every week or two this is the case.

I would like to hear someone in the news once in a while saying that my good friend Jimmy Carter and the Democratic administration—I'm a Democrat, as all you know, I would like to have some Indians in the business too.

I just wanted to say this in the record.

Chairman **Abourezk.** Well, the Arabs feel the same way, of course, as you do. Nobody ever mentions the Arabs either, except in a bad context.

Commissioner **Dial.** I know we are only 1 million, maybe less or maybe more, but I would like to hear spelled out once in a while that we are going to have so many American Indians in office, and the news last evening said so many Mexican Americans and so many blacks and so forth. Four times as many and seven times as many as the previous administration. I don't recall the numbers but I think you get the point.

While I am speaking: Since we had some discussion and some difference of opinion on the court today, and its business of individual liberties, and tribal courts, I would like for Ernie and his staff—Pete Taylor and others—to consider this.

I would like to know, Senator Abourezk: How do you feel about an Indian Federal court of appeals? Some Indian judges would probably serve on this court, if you had such a court, and, of course, cases would move from this court to the highest court in the land—the Supreme Court of the United States.

It would probably be very difficult to get legislation to establish such a court, but it would seem to me that it would be something that would satisfy all the people.

An Indian Federal court of appeals would be the same as a Federal circuit court of appeals, and the next step, of course, would be the Supreme Court of the United States. Cases of tribal courts would move to the Federal Indian court of appeals.

Chairman **Abourezk.** Could we ask that the staff give us an opinion on that the next time around? You might sit down and visit with Adolph to get more details.

Mr. **Taylor.** I did speak to Dexter Brooks about it. I have also spoken to Alan about the conceptions that have arisen here. I think what we can do is lay on two or three alternative systems that might be conceivable, including the one that you just mentioned.

Commissioner **Deer.** Mr. Chairman, I just wanted to ask our staff here: Why was the Indian career service never implemented?

Mr. **Funke.** According to Felix Cohen, in 1942, in his handbook he stated that the excuse was they didn't have adequate appropriations; and in 1953, in the Yale Law Review article, he said that they had been getting away with it for so long they just decided never to do it.

Chairman **Abourezk.** All right, do you have anything left in this chapter? Is that all?

Mr. **Stevens.** That is it.

Chairman **Abourezk.** Then let's act, with the one exception that you are going to come back with different language. Let's move to adopt. We know the concept, we can adopt the concept and work on the language.

Let's get out of this section.

Commissioner **Borbridge.** So moved, Mr. Chairman.

Commissioner **Deer.** Seconded.

Chairman **Abourezk.** All those in favor of adopting chapter 6 will raise their right hand.

The vote is 6 to 0 in favor of adopting the section. The section is adopted.

Is there anything more to come before the Commission today?

Mr. **Stevens**. No, sir.

Chairman **Abourezk**. All right, the next meeting is a week from today, Friday, March 4, room 2261, Rayburn House Office Building, at 10 a.m.

No meeting tomorrow.

The Commission will now recess.

[Whereupon, at 4:55 p.m., the meeting was recessed, to reconvene on Friday, March 4, at 10 a.m.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

FRIDAY, MARCH 4, 1977

American Indian Policy Review Commission,
Washington, D.C.

The Commission met, pursuant to recess, at 10:10 a.m., in room 2261, Rayburn House Office Building, Senator James Abourezk, chairman of the Commission, presiding.

Present: Senator James Abourezk, chairman; Congressmen Lloyd Meeds, vice chairman; Sidney R. Yates; and Don Young; Commissioners John Borbridge, Adolph L. Dial, Louis R. Bruce, Ada Deer, and Jake Whitecrow.

Staff present: Ernest L. Stevens, staff director; Max Richtman, Gilbert Hall, Peter Taylor, Eileen Stillwaggon, Laurel Beedon, and Richmond Allan.

Chairman Abourezk. The American Indian Policy Review Commission meeting will come to order.

I just want to announce before we start that we are under greater time constraints today then we ever have been. Louis Bruce just told me that he has got to leave here by 3:15 to catch his plane because he has a potential cataract operation on his eye coming up. He has to go to the doctor in Syracuse, N.Y., and has to leave this afternoon in order to make it.

If any one person here leaves, there will not be a quorum, so we just can't do any more business after Louis leaves. I have to leave here at noon because I am hosting a lunch on the Senate side for a whole group of Senators and I have to be there. Unless we can get one of the other congressional members to come in and fill out the quorum, that will be 1½ hours knocked out of our work.

So will the clerk call the role and let's get with it.

Clerk. Commissioner Borbridge.

Commissioner Borbridge. Present.

Clerk. Commissioner Bruce.

Commissioner Bruce. Present.

Clerk. Commissioner Deer.

Commissioner Deer. Present.

Clerk. Commissioner Dial.

Commissioner Dial. Present.

Clerk. Senator Hatfield.

Congressman Meeds.

Senator Metcalf.

Commissioner Whitecrow.

Commissioner Whitecrow. Here.

page 124 Blank

Clerk. Congressman Yates.

Congressman Young.

Chairman Abourezk.

Chairman Abourezk. Here.

Clerk. Six present.

Chairman Abourezk. Let the record show a quorum is present.

Max Richtman.

Mr. Richtman. I will make this very brief.

We covered a lot of these administrative matters at the last meeting a week ago. We now have about half of the tentative final report that has been offset printed. As soon as we complete each chapter, we are sending it to the service department to have it printed.

We hope that by using this process to be able to mail out a tentative draft on March 14 or 15.

On page 2 of the progress report is a list of categories that are included in the mailing list that the staff has developed.

There are slightly under 1,200 individuals and groups on the mailing list. If the Commission has any suggestions or knows of any individuals or organizations that are particularly interested, who would like to get a draft of the report, we would be glad to include them on the mailing list.

You could just let me know by phone or by mail.

Attached to the tentative final report will be a letter from the chairman urging recipients to submit their comments as promptly as possible. We are still in the process of developing a questionnaire that the small staff can deal with when it comes back to the Commission offices, in terms of categorizing the comments and including them in the report.

During the 30-day period that these comments are out, the staff that remains at the Commission will be editing and finally smoothing out the report.

We also have obtained D'Arcy McNickle for 30 days to help us do that. Charlie Wilkinson, Pat Zell, and a few other people have volunteered their services to help us in editing the final report. They will be receiving copies of the draft and communicating with us by mail and phone in this editing process.

We have also retained a professional indexer to index the report and that process will be ongoing during this 30-day comment period. So a lot of Commission business will be taking place during this period finalizing the report.

With respect to the format of the final report, Senator Abourezk made an announcement on the Senate floor that 1,000 additional copies shall be printed for use of the Commission. Many of these will go to the Commissioners as they requested for their use.

Chairman Abourezk. The Commissioners can use those as they see fit: isn't that right?

Mr. Richtman. Yes; that is right.

We are still discussing a format for the final report with the Joint Committee on Printing, and the Government Printing Office.

We have requested that the format include various kinds of charts, eight color photographs, one or two to a page—this is described on page 4 of the progress report—and two double-page U.S. maps with four colors.

Chairman Abourezk. Will that show Indian reservations?

Mr. Richtman. Yes.

Chairman Abourezk. What have you done with Maine?

Mr. Richtman. We are going to get to that later.

Chairman Abourezk. What color is Maine?

Mr. Richtman. This process is very complicated. We will have to have a precise estimate as to what it is going to cost before a concurrent resolution can be introduced in the Senate and the House to allow the Commission to take this form. In order to get that estimate we have to produce all of the art work that is involved and give that to the Government Printing Office.

We are getting that art work for free from Andy Anderson at Union Carbide. As soon as we get that estimate we will go on from there.

If there are no other questions, we can go on to the other business.

Chairman Abourezk. I don't have anything.

Commissioner Bruce. I have a question.

You say here BIA field offices.

Mr. Richtman. Yes.

Commissioner Bruce. Have you made a list of Indian schools?

Mr. Richtman. We have. In here there are selected Indian-controlled schools. We will have 10 of them. In talking to Chuck Emory, he suggested the 10 that would be most responsive. We have talked to people, selected CETA prime sponsors, and we asked Sandy MacNabb to recommend the 10 that would most likely be responsive and write some useful input.

We have gone through this general process all through this list.

Commissioner Whitecrow. Mr. Chairman, I think that we have discussed this on several occasions. I am not sure whether we made it a matter of record insofar as getting out letters of certificates of appreciation to all of the people who have had involvement in the preparation of this report from the Commission.

Also, I would like to make this a matter of record. The Chairman has signed letters of recommendation for some of the people who have gone on, but I would like to see a certificate of appreciation that would be signed by all of the Commissioners to those people who have had great involvement with this Commission work.

I would also like to have a certificate of that nature for my home wall at home signed by the rest of the Commissioners.

Commissioner Deer. We have already discussed this and Mr. Bruce is working on it. So we should have something ready to present.

Chairman Abourezk. Thank you and have a special certificate for Union Carbide.

Commissioner Whitecrow. You bet.

Chairman Abourezk. Is that it?

Pete Taylor, you are up next.

Mr. Taylor. The next subject for discussion is editorial action, which has occurred since our last meeting last Friday.

I might say that the editorial action has been rather frenetic and hectic.

Chairman Abourezk. We would hope so.

Mr. Taylor. In order to expedite the discussion, I would note that we have reviewed the transcript from the last meeting and there were numerous suggestions made. It would be rather difficult to jump back and forth from the transcript to the page references, but we have reviewed all of the chapters. Tribal government had major recommendations which we have not polished into the final position.

I hope that we can present an outline of the two major areas this afternoon. One of them dealt with the appeal provisions in the Federal courts from judgments of tribal courts. I think we can have an outline of the proposed concept this afternoon.

The other was the problem of tribal override of secretarial disapprovals of the use of trust assets and how the mechanics of that might work.

Again, I hope I can have an outline of that this afternoon when we deal with tribal government.

We have sent numerous chapters over to the printer for the printing of 1,200 copies for the ultimate distribution. We have incorporated these minor revisions or word changes or concept changes in those chapters as they went over.

We do have a few substantive additions. Chapter 9 involved a complete rewrite. That is going to be the first item we take up after this discussion of the editorial action. That is on the off-reservation Indians. We have five pages of changes and recommendations on education which have been substituted into the chapter that went to the printer. It conforms to the suggestions and recommendations on the transcript.

Chairman **Abourezk**. Pete, have you made the changes that the Commission has recommended?

Mr. **Taylor**. Yes, sir.

Chairman **Abourezk**. All right. Let's do away with your description of it, if that is all right with the Commission, and let's go on with the substantive chapters.

Mr. **Taylor**. I was about to conclude there anyway.

Chairman **Abourezk**. OK.

Mr. **Taylor**. So I think that we are now ready for off-reservation Indians.

Chairman **Abourezk**. Is that the new section we have handed to us?

Ms. **Beedon**. Yes; that is the one.

Chairman **Abourezk**. What page are your recommendations on?

Ms. **Beedon**. Page 930, and they run through 932.

I would like to begin with "the Congress would direct."

Commissioner **Bruce**. Page 930 is not here. Is it on your copy?

Ms. **Beedon**. You don't have page 930?

Mr. **Hall**. Does it start off with, "It is recommended that the delivery of services * * *"?

Apparently they have an unnumbered one, but that is the same thing.

Ms. **Beedon**. Does everyone else have that?

Chairman **Abourezk**. I have to say this is very nice. I am very happy with the first page of recommendations.

Ms. **Beedon**. "It is recommended for the delivery of services."

Commissioner **Borbridge**. I don't have my material.

Ms. **Beedon**. First, the overall recommendation before we move to the breakdown recommendations of which there are six, is that because the problem of Indians in urban areas are unique—in the sense that they are physically away from tribal society—Congress should direct that the executive deliver appropriate services through urban Indian centers.

Then we break down services from the urban Indian centers into four basic areas, and I would like to talk about the two recommendations under the urban center.

First of all, "turning over BIA Employment Assistance Offices," it says "urban offices." That is a mistake. I meant "employment assistance." I think that should be made clear. "Employment Assistance Offices and their contracts to urban service centers; removing Federal domestic assistance dollars from separate programs and targeting them to the urban centers."

What this would do would be to provide funds for the urban centers—funds that are already being utilized rather than have to go through a whole new gathering of funds. The moneys are there.

All we have to do is pull them away from the executive branch and place, at the appropriate time, administration of Federal funds targeted for urban Indians under an urban Indian office—a separate office within the consolidated, independent Indian agency.

Second, employment services: Under the urban Indian centers this sets up a series of programs for employment counseling, employment assistance, vocational skills development, an Indian employment agency, and the appropriate administration of those services.

Education, primary rather than secondary status for the receipt of Johnson-O'Malley funds. I do not mean removing primary status from children on reservations. All I mean, as it stands now, urban children have only secondary status for receiving any kind of Johnson-O'Malley dollars. I think that they should be placed on an equal footing with children on the reservation.

Technical assistance for working with regulations and expediting the funding process. In other words, grantsmanship. Again, this can all come through the urban centers.

A positive role in program policy formation in the schools where there are Indian children and funding for administrative and program costs.

Fourth, housing: Once, again, assuring that the urban centers will be funded to provide, first of all, a real estate clearinghouse to provide information on available living quarters.

Consumer education, as far as housing is concerned. Grants for: Initial moving costs, immediate support, rent supplements, housing improvements, and reestablish the program that was formerly funded through the BIA providing equity grants for downpayments for relocatees who have lived in the city for more than 2 years. That was the original program to extend that to all urban Indians.

Chairman ABOUREZK. May I make one suggestion here?

Ms. BEEDON. Yes.

Chairman ABOUREZK. The housing recommendation—that is just editorial more than anything. Can you just say, "Congress should direct the Executive to assure funding for urban Indian centers to provide"—you will cut out a lot of words there, it seems to me.

Ms. BEEDON. Surely.

Chairman ABOUREZK. Or should mandate, period, without saying the rest of it. "Congress should mandate that urban Indian centers would be funded to provide"—is that acceptable?

Ms. **Beedon**. Yes.

The fifth breakdown is health and, again, coming through the urban center. The urban center: Would serve as a clearinghouse for health care information; let contracts for Indian health care; establish health educational programs; and establish health care programs on its premises—again, there are two possibilities there as far as contracting out for an area in a hospital, maybe having an emergency clinic within the urban center, that is optional—serve as a liaison between Indian people and other health care institutions; act as a monitor for funds designated for Indian urban health care and administration costs.

Chairman **Abourezk**. Could you make the same editorial change under that first health recommendation?

Ms. **Beedon**. Yes.

Chairman **Abourezk**. Also, under general, it seems to me it would be better if you were to say that the executive branch should conduct a detailed examination and leave out the part about appropriated moneys because they may or may not have to appropriate moneys. They may have them available.

Ms. **Beedon**. Yes.

Chairman **Abourezk**. Is that acceptable?

Are there any questions or comments on this section?

Commissioner **Whitecrow**. Mr. Chairman.

Chairman **Abourezk**. Jake.

Commissioner **Whitecrow**. I would like to just make one comment in regard to the funding of the budget preparation.

As you know, in the past in many of our meetings I have discussed the requirement, or the potential requirement, of funneling all of the Federal funds down through a tribe, and I haven't changed my opinion as far as this is concerned.

However, in our sessions yesterday we did make a great deal of progress insofar as determining how this could be done, and the manner in which it is presented to us here is a step-by-step procedure. I feel that over a period of years the tribal government will become more confident, more able to fulfill the responsibilities to their tribal citizens who are currently away from home.

So, as the process evolved over a period of years, I would like to see the report here so state. I am not sure that that is included in the narrative. Is it in the narrative?

Ms. **Beedon**. Yes.

Mr. **Stevens**. I would like to cite that section. That is on page 18, at the bottom of the page. It is stated as an alternative. It says, "recently there has been an increased amount of interest by individual Indian tribes in assisting in the distribution and monitoring of Federal funds to urban Indians."

There are, in fact, several programs now administered by the Bureau of Indian Affairs and Indian Health Service which might easily be operated by tribal governments for all their members.

However, it is necessary to outline which of those funds are applicable to such a proposal and it does go into the trust funds. It points out that many of the Federal domestic assistance programs are administered by various agencies who are aimed specifically at census or geographical populations. Identifying and transferring those appropriations to the tribes would be extremely difficult. The Commission recommends that the executive branch appropriate moneys to conduct a detailed examination of assistance programs and need areas which would be most expeditiously administered by tribal governments.

The possibility would move that into the recommendations as a specific recommendation. Anyway, all the way down to the bottom of page 19, it goes into that whole rationale.

Commissioner **Whitecrow**. Do you think it would be better if we included that as a recommendation?

Mr. **Stevens**. We could do that, sir.

Commissioner **Bruce**. I think so.

Commissioner **Whitecrow**. To insure this process: I think that in the long run we are looking at an improvement insofar as the funding process is concerned. This would then give people 15 to 20 years from now an opportunity to take a look at this and see that this was a concept that was considered at that time.

Mr. **Stevens**. All right. So, on the bottom of the first paragraph on page 19, the recommendation asking that the executive branch appropriate moneys to conduct a detailed examination of assistance programs and need areas which could be administered by tribal governments, that will be inserted with the rest of the recommendations at the end.

Mr. **Hall**. I would suggest that that be added into the general, in which we currently have some change in wording, to reflect the tribal governments administering the program.

Chairman **Abourezk**. Is there an objection to the amendment? If not, the amendment is agreeable.

We have to adopt this chapter.

Are there questions on the adoption of section 9 on off-reservation Indians?

Is there a motion?

Commissioner **Whitecrow**. I so move.

Commissioner **Borbridge**. I second it.

Chairman **Abourezk**. All those in favor, raise your right hand.

The vote is 6 to 0 in favor of adoption.

Let's go to the next section.

Mr. **Taylor**. The next subject for discussion on the agenda is the Passamaquoddy situation.

Chairman **Abourezk**. It is my understanding that the Commission has voted to undertake a discussion of the Passamaquoddy situation. Let me ask a question, first.

What other sections do we need to take up today?

Mr. **Taylor**. Tribal government in which there is an additional section.

Chairman **Abourezk**. Federal administration?

Mr. **Taylor**. Federal administration, economic development, and a supplemental addition to the Alaska one.

Chairman **Abourezk**. Once we finish this agenda, is that the end of the report as far as the first draft is concerned?

Mr. **Taylor**. Yes, sir.

Chairman **Abourezk**. Let me make a suggestion to the Commission. Instead of discussing Passamaquoddy now, can we try to take care of these chapters? I understand the Passamaquoddy leaders are coming to the Commission today. Has everyone heard about that?

Commissioner **Whitecrow**. I have heard that.

Chairman **Abourezk**. If you haven't heard, they called yesterday and said that they would be down. They will try to catch us all at lunchtime so that we can have an extended discussion.

With the permission of the Commission, can we take care of the other areas first and then do Passamaquoddy after lunch? That would also take care of our time problem insofar as getting approval on these elements we have been dealing with in the report.

Mr. **Hall**. One problem, Mr. Chairman, the person who did most of the work on economic development is not currently here.

Chairman **Abourezk**. Well, while we are doing the other ones, can we reach her?

Mr. **Hall**. We are trying to reach her now and, hopefully, by that time she will be here.

Chairman **Abourezk**. So I guess tribal government is the next section.

Mr. **Taylor**. At our last meeting we covered a great deal of tribal government. We had a section entitled "legal status." It is divided into four sections, the first two sections were approved. The third section is entitled "political relationships in the Indian Reorganization Act." Findings and recommendations for that section appear on page 45 in chapter 5.

There were numerous recommendations made which, very frankly, we have not had time to develop the provisions in accordance with the recommendations. The primary discussion on this, I believe, occurred on page 47 in paragraph 3.

It related to the amendment of section 2 of title 25 to allow tribes to override a secretarial disapproval. We need to flush out recommendations on this. We are simply not prepared to discuss this at this time.

Chairman **Abourezk**. What do you mean flush out recommendations?

Had we decided at the last meeting what ought to be done?

Mr. **Taylor**. I think we decided the principles.

Chairman **Abourezk**. And the staff hasn't written it yet, is that what you are saying?

Mr. **Taylor**. That is correct, but I think that we came to an agreement on principles.

What I would like to do is draft this up and send it out first thing next week and follow up with phone calls to be sure that what we have done is in accord with the wishes of the Commission.

Chairman **Abourezk**. I guess we have no choice; OK.

Mr. **Taylor**. We have a similar situation in part 4 here—the 1968 Civil Rights Act.

Chairman **Abourezk**. What page are you on now?

Mr. **Taylor**. These findings and recommendations appear on page 59.

The primary point of discussion here included making provisions for direct appeals from tribal court decisions to Federal courts. There were alternatives discussed. Commissioner Dial proposed an appeal to the U.S. circuit court level.

There is the question of exhanstion of tribal remedies—tribal appellate systems. This is a provision which we have simply not written yet. The principles that were discussed are more clear from the transcript, and I would like to handle that the same way.

Chairman **Abourezk**. All right.

Mr. **Taylor**. In part B we have constraints on tribal government. It is primarily administrative type material.

Chairman **Abourezk**. What page are you on now?

Mr. **Taylor**. This actually runs a considerable length—from page 62 through page 89. This is one of those areas where the recommendations were, rather, much more of a minor nature. It is possible to simply make word changes and minor changes of phraseology.

Chairman **Abourezk**. Have you done that yet?

Mr. **Taylor**. I believe that has been done. I asked that the transcript be reviewed and checked against our proposed chapters down at the office. Frankly, I found a couple of errors in it, and I am going to have to go back and recheck to make sure what was done. But I believe those changes were made. The recommendations or amendments in this entire section were very clear, and there was no difficulty in making those changes.

Chairman **Abourezk**. All right.

Mr. **Taylor**. Section C of Public Law 83-280—there were no changes. The other justice systems, part 1 which is in the report, was satisfactory.

We advised you at our last meeting that we were adding some additional material to that; namely, with respect to major crimes and assimilated crimes. I didn't expect to get to this until this afternoon. It is down at the office being xeroxed.

I could outline for you, basically, what we are asking for and get an agreement in principle. Perhaps that would be satisfactory. Then we could supply the material to you this afternoon.

Chairman **Abourezk**. All right.

Mr. **Taylor**. Basically, we identified problems under the Major Crimes Act which is a Federal felony statute, applicable to Indians in Indian country, as falling into two categories.

One of them is the failure of Federal investigators to properly investigate these cases and the failure of Federal prosecutors to prosecute them. There is almost an 80-percent declination rate. By declination rate I mean U.S. prosecutors refusing to prosecute. The great problem on this declination rate is that tribal people are never told why these cases are being declined. So there is great resentment and suspicion between the tribal people, the Federal investigators, the FBI, and the U.S. attorney's office. So we have the investigator-prosecutor problem.

Our recommendation on that is the tribal police officers and the Bureau of Indian Affairs police officers be authorized to take cases directly to the U.S. attorney instead of having to call in the FBI to do the job a second time, in effect.

The Bureau of Indian Affairs has sought this in the past. There have been meetings with the Department of Justice.

So what we are suggesting is a congressional oversight on this—to call up before an appropriate committee representatives of the Department of Justice, the Bureau of Indian Affairs, and tribal police and judicial authorities to determine why there should be resistance to this recommendation.

The second aspect of the Major Crimes Act is a problem with respect to respective jurisdictions of tribal courts and Federal courts. It is a problem we touched on at our last meeting in connection with the concept of tribal courts being a Federal instrumentality and what potential impact that that might have.

Again, our recommendation in that area is that there be appropriate congressional oversight hearings to determine from the Department of Justice, the Department of Interior, and tribal police and judicial authorities what the ramifications of that decision is and whether mandatory legislation is needed.

The third area that we will be submitting the paper on this afternoon deals with the Assimilative Crimes Act. The problem under the Assimilative Crimes Act—well, first I should describe what the Assimilative Crimes Act is.

The Assimilative Crimes Act is a Federal criminal statute or a Federal statute that adopts State law into Federal claims. The purpose of that act was and is to supplement existing Federal legislation in Federal enclave areas, and the reservations are not Federal enclaves; they are Indian country.

Through the General Crimes Act, all Federal laws applicable and in enclave—there is a very difficult problem between a normal Federal enclave and Indian country. Federal enclaves originally were under sole and exclusive jurisdiction of the Federal Government. There was no local law at all, and it was necessary to flush out the Federal code by bringing in applicable State law which would provide a full and complete code.

In Indian country, you have a very different situation as to Indian people. Without question, tribal law applies. As to non-Indian people, depending on circumstances, State law may apply. And as to both Indian and non-Indian, certain Federal laws apply. The situation is quite different.

The Department of Justice has taken a very broad view of the Assimilative Crimes Act, that it brings into Indian country a very broad range of State regulatory laws—morals laws. Given its broadest perspective, it could, in effect, wipe out the capacity of tribes to legislate on practically any subject that a legislative body legislates on.

It is necessary that the parameters of this thing be discovered and some limits set on what laws are being incorporated into the Indian country and what an impact this is having on tribal jurisdiction.

So again, our recommendation on this section, the assimilative crimes, is that the appropriate committee have congressional oversight hearings, bring before it representatives of the Department of Justice, Interior, and the tribal police and judiciary to discuss this situation and see if mandatory legislation is required. That is the paper that will be submitted to you this afternoon.

In view of the recommendations, perhaps we can have some consensus now while we still have a quorum.

Chairman **Abourezk**. Let's finish this chapter. Perhaps we can act on what you have given us verbally as well as what is in writing because it is not a final action anyhow. But we can give it tentative approval as we have everything else.

Mr. **Taylor**. That completes my presentation on tribal government.

Commissioner **Whitecrow**. I would like to ask a question.

Mr. Chairman and Pete, in regard to the Assimilative Crimes Act in itself, has enough research been done on it that we can make a determination today as to whether or not the Assimilative Crimes Act could be appealed as was recommended by task force No. 9, insofar as it applies to Indian country?

Mr. **Taylor**. I don't think the recommendations of task force No. 9 were for outright repeal. Task force No. 4 may have recommended that.

Commissioner **Whitecrow**. One of them, I remember, did recommend.

Mr. **Taylor**. We recommended a rule of construction which would limit the application to the Assimilative Crimes Act, in which there were either crimes of violence against a person or property between an Indian and a non-Indian.

It is our belief, from our research, that that was the original intent of the General Crimes Act, which is the act that makes the Asssimilative Crimes Act. It brings it into Indian country.

The recommendations we are making, Mr. Commissioner, for this report are not as broad and extensive as what was recommended by task force No. 9.

Commissioner **Whitecrow**. It is not as broad?

Mr. **Taylor**. That is correct.

Commissioner **Whitecrow**. Why not?

Mr. **Taylor**. Frankly, I think in the absence of some oversight hearings, I just don't believe Congress is going to enact it.

Probably, the more likely way to get a resolution of this is to call for an oversight hearing and use task force recommendations at that point as a lever and a push.

Commissioner **Whitecrow**. You don't feel that in the normal legislative process in the hearings conducted if we would make a recommendation to repeal the Assimilative Crimes Act as it applies to Native country? You don't feel enough hearings would be conducted in that process to make a determination to repeal it?

Mr. **Taylor**. In the hearings that we are calling for?

Commissioner **Whitecrow**. In the hearings that would normally take place in congressional action on this report, you don't feel that there will be enough information gathered and enough comments gathered on that rather than oversight hearing? Do you feel that is the most direct approach or do you feel that the normal congressional committee hearings are the recommendation?

Mr. **Taylor**. I think the second approach would be an appropriate step on this. Frankly, I believe that if the application of that Assimilative Crimes Act is properly challenged in district court, that the present construction that the Department of Justice is putting on it will not prevail. They do have a case, 1950, called *U.S.* v. *Sassour*. But, with one or two minor exceptions, I don't know of another case they can rely on, and I think that *U.S.* v. *Sassour* was wrong in its citing.

Commissioner **Whitecrow**. Of course, all of the Commissioners understand my concern in this particular area because I feel that that particular act hinders a tribe in its economic development processes, particularly in business operations.

Mr. TAYLOR. Well, I think there were findings in the task force reports that support your statement. I believe there is a reference to the Southern Ute Tribe in Colorado that had a tourist attraction and wished to set up Friday night bingo games, something that even the boys club in Arlington is doing nowadays. The U.S. Attorney threatened to prosecute them under State law that forbids playing of bingo in Colorado if they did such a thing. Frankly, that is just not tolerable. That is not what tribal self-determination and tribal sovereignty means.

Commissioner WHITECROW. The same thing has applied to me. I have been threatened with prosecution also based on the Assimilative Crimes Act application.

So that is why I am concerned here. I am not familiar with this, Mr. Chairman, perhaps you can tell me: Insofar as the length of time we are talking about in oversight hearings, how long a process would this be?

Chairman ABOUREZK. It depends on the issue. They can go from 2 hours to 20 days depending on the issue. But, normally, one of this nature would take about 3 days, with half-day hearings, I would say.

Mr. TAYLOR. I would assume there would be some advance preparation.

Chairman ABOUREZK. Yes; but once you set up the hearings, it would not take all that long.

Commissioner WHITECROW. Wouldn't that be the best process to bring this all to a head?

Chairman ABOUREZK. Yes.

Mr. TAYLOR. I have a comment. I think on one hand the view that the Federal prosecutors are reluctant to prosecute, but yet on the other hand we have the Federal Government in there wanting to assert jurisdiction.

I would hope that in our report this contradiction is outlined.

Mr. TAYLOR. I am not sure whether it was done. I know it crossed my mind, while I was sitting there with a pencil, and we will get that in. But I agree with you that the U.S. Attorney is very responsive. If it appears to be anything that smacks of a commercial operation, there is protest from perhaps the local county government that feels that tribes would be doing something that they themselves are forbidding their own citizens to do.

When there is a crime of violence on the reservation, it seems there is relative indifference and delay. I certainly have noted that dichotomy.

Commissioner WHITECROW. Mr. Chairman, I would just like to point this out. Insofar as the criminal aspects of it are concerned—the criminal application of State criminal law on Indian reservations—I have no specific problem with that, but I do have problem when we come to the moral issues involved in the law. I would like to make that a matter of record in our report. If we are going to provide a tribe with an ample opportunity of developing business operations, for instance, a tribal operation insofar as conducting bingo games or paramutual horse racing, or what have you, these are not, as I understand it, anti-Federal laws, but they are anti some State laws.

Mr. TAYLOR. Yes.

Chairman ABOUREZK. Could we put in a recommendation that might allow the tribes to adopt whatever State laws they might want to and reject other ones? Isn't that what you were getting at?

Commissioner WHITECROW. That is it, basically.

Chairman ABOUREZK. Perhaps, to come to the middle ground on it, what if, in your recommendation for oversight hearings, the hearings would be held with an eye toward partial repeal of the Assimilative Crimes Act so that tribes would have a greater option in determining which parts they want to keep and which parts they don't want to keep?

Mr. TAYLOR. I think our recommendation runs right along that line. We make the statement that in any legislative considerations a primary objective that must be kept in mind is the fact that tribes are self-governing. They are sovereign, and the entire Federal policy has always been to leave them free from the restraints of State laws.

Chairman ABOUREZK. I think that might take care of Jake's objection.

Commissioner WHITECROW. Right.

Chairman ABOUREZK. All right. Why don't you make it as strong as you can in that direction, then?

Mr. TAYLOR. I would be very pleased to.

Chairman ABOUREZK. OK. Are there other questions or comments? If not, is there a motion to adopt this chapter?

Commissioner WHITECROW. I so move.

Commissioner DEER. I second it.

Chairman ABOUREZK. The motion has been moved and seconded. All those in favor, raise your right hand. The vote is 6 to 0 in favor of adoption.

Next chapter.

Mr. TAYLOR. The next chapter is Federal administration. This is Ernie Stevens' and Gil Hall's chapter.

Commissioner BORBRIDGE. Mr. Chairman, while we are preparing to move, I would like to introduce a distinguished visitor from the State of Alaska, Mr. Byron Mallott, who is chairman of the statewide Native organization in Alaska, the Alaska Federation of Natives, Inc.

Chairman ABOUREZK. Welcome to the Commission, Mr. Mallott.

Mr. HALL. Mr. Chairman, I understand we don't have the Federal administration chapter up here yet. I would suggest the economic development chapter is here even though the person who has spent most of the time on it is not. I think I can discuss the substance of the recommendations.

The recommendations start on page 17. Recommendation No. 1 on page 17 states that Congress should institute changes in the economic development assistance programs to allow tribes the flexibility in securing technical assistance and long-term funding on tribally determined goals.

This should include funding of tribally owned and operated enterprises. I should point out that this is the first time that we have covered this chapter in any depth, and the narrative backing up the recommendations has not yet been completed but will be shortly.

I consider the bulk of these recommendations as policy directions that Congress should establish rather than specifics.

Chairman **Abourezk.** May I ask you about No. 2?

Mr. **Hall.** Yes, sir.

Chairman **Abourezk.** The agency should be directed to remove administrative obstacles in joint ventures between tribes and businesses.

I know in the past, at least in my own experience, there has been probably as much trouble in Indian country from this joint venture business as there is anything else that results from non-Indian hustlers who see a chance to get Federal funding come in and euchre the tribes on some kinds of a business development and drain the money out of the appropriation and walk away.

I was just wondering what protections we might provide for the tribes in that regard. I agree with you on that if we remove the obstacle. In some cases, I think the obstacle had been put there in order to try to protect the tribes.

Maybe it hasn't always worked all the time, but in your narrative do you have a full discussion of that?

Mr. **Hall.** Yes; there should be. I thoroughly agree with your concern with that, Mr. Chairman. I would suggest, however, that the intent of one and two both is to allow the flexibility for such joint ventures in those situations in which tribes are capable of doing so, and to provide technical assistance and advice to those tribes to assure that the type of thing you are talking about doesn't happen.

The way things currently are now, I understand, the administrative procedures and regulations are such that, even if a tribe is quite capable of entering in such a venture successfully and with technical assistance, it is often prevented from doing so because of administrative procedures.

Chairman **Abourezk.** I think it is a good enough general guideline just so we will understand what the pitfalls are.

Mr. **Hall.** Recommendation No. 3: Congress should appropriate sufficient funds and technical assistance to tribes to insure the preservation and consolidation and acquisition of the Indian land base because an adequate land base is essential for meaningful tribal development.

It should include existing tribes and devise comprehensive land consolidation plans. There can be no question that the land base is a primary concern in Indian country. It is partially a result, of course, of the overwhelming heirship problems which we are faced with, which is dealt with in the following recommendation.

Tribes have said, and Indians as a group have said consistently, that we need technical assistance and some funding, primarily in terms of loans—is what we hear more than anything—to assist in consolidating their land base and buying up fractionated heirships, et cetera.

The corollary to that is also, and explains partially, why we took the approach that we did in recommendation No. 4; that is, not to impose a solution which would apply across the board to fractionated heirship problems.

The tribes insist that they want to devise their own plans which are appropriate for their individual reservations, and No. 4 says that the United States Code should be amended to provide for that flexibility.

Then we list some suggestions on how tribes might deal with the problem of fractionated heirships.

Chairman **Abourezk**. That is going to be the happiest recommendation you have made in this whole report. It will make a lot of people happy.

Mr. **Hall**. To be honest with you, Mr. Chairman, I am somewhat disappointed we were not able to devise a comprehensive plan or a suggested plan ourselves on how to sort the whole thing out. But, for a variety of reasons, we were not able to do so. So we identified alternatives and left the option in.

Commissioner **Whitecrow**. May I ask a question about that, Mr. Chairman, if I may?

We are recommending here that the tribes should have the first option for purchasing. How do we see in this process providing the tribes with the money for purchase?

Mr. **Hall**. That is the intent of recommendation No. 3, Mr. Commissioner. That was a plan as devised by the tribes. Hopefully, funds would be made available sufficiently so that the plan could actually work.

As you all know, there is currently authorization for considerable funds to be made available for such a plan, but they are grossly inadequate in amount in terms of dealing with the problem.

Section 5 of the Indian Reorganization Act provides for a grant, or a potential grant, of $2 million annually from the Federal Government to tribes for consolidation and purchase of land.

Now, since that 1934 act was passed, a total of a little over $5 million has been appropriated pursuant to that section. If the appropriation had been used to the fullest extent of the authorization, it would have been $18 million-plus.

Commissioner **Whitecrow**. I know, but at the same time, these have also been used as offsets in many of the Indian claims, so, therefore, the money has actually been returned with interest to the Federal Government in this regard.

From the standpoint of providing immediate funds to tribes to begin repurchasing this land, because every day that we extend we are having more land loss, therefore, we need to provide some method by which we can provide an immediate loan process so that tribes can begin purchasing these lands.

We also need to find a process whereby the lands can be used as collateral for these loans because that is one of the holdups at the present time. The tribes could get the money for purchase if there was some method by which the land could be used for collateral.

Perhaps, in the same attitude that the housing program is taking, the land and paying taxes on that land for a certain period of time at the completion of the loan and the repayment, then the land goes back into trust status. Do we have that in these recommendations?

Mr. **Hall**. Not specifically, no, Mr. Commissioner. I think your point is well taken. I think what we could and should do here is add that there are some amendments necessary to the act authorizing the Indian land acquisition loan program in the Department of Agriculture which has been in existence for 4 years but grossly underfunded to meet the problem. At least beefing up the amount of moneys that are available under the Indian Reorganization Act or perhaps consolidating those two into the same program, into a grant and loan program aimed solely at land consolidation plans.

I think you are right. We could, and should, add a recommendation to that effect here.

Chairman **Abourezk**. Would the Commission also accept an amendment which would include landless tribes? That is because I understand that the Interior and Agriculture Departments resisted providing any loans at all to tribes which have no land at all.

Commissioner **Whitecrow**. Mr. Chairman, I would think that if we go this far we would have already established a process, and provided a process, whereby nonrecognized tribes could become recognized. I think we need to be sure that those nonrecognized tribes, as they are recognized, would have this same loan process available to them for land acquisition.

Mr. **Hall**. The way it is currently, once recognition is granted, then they will automatically be available for those programs.

Chairman **Abourezk**. But not landless tribes. It seems to me that there ought to be a sentence in there saying: "including tribes which have no land." Would that be agreeable?

Without objection, the amendment is adopted.

Commissioner **Borbridge**. Mr. Chairman, I have a question.

Reference is made in a number of instances to "reservation" lands. What about those lands that are simply acquired by the tribe?

For one thing, the land may fall into the category of fee simple lands under a land consolidation program, or they may be technically "reservation" trust lands, as such. Are the recommendations so framed that they pertain, not only to those lands which are technically denominated "reservation" lands, but also to lands that are acquired in fee under a land consolidation program? Or do they simply pertain to those lands which are owned in trust by the tribe? Do you consider that the recommendations are encompassing enough to take care of those various situations?

Mr. **Hall**. I think it would be clarified some to fit that, certainly. I think the priority is consolidated lands, of course, within the current boundaries of the reservation as recognized.

But that should not preclude, I don't think, acquisition elsewhere. Of course, tribes now have generally the power, and do buy lands outright, on their own in fee.

The difficulty that they encounter now, however, is getting that accepted by the Secretary of the Interior into the trust status. There is no consistently announced coherent policy in the Department of the Interior currently on accepting lands in trust that the tribe may acquire from any source.

I just got a call yesterday from a gentleman in California with a small tribe there that has 10 acres of land which is owned in fee by the tribe. They have been trying for 20 years to get that placed in trust by Interior. They are getting inconsistent comments from the various parts of the Department of the Interior that the Secretary even has the authority to accept it.

I have no doubt that he has the authority, but they don't have a policy for it.

Commissioner **Borbridge**. In the example that you give wherein the tribe has acquired land which is not in fee simple title and therefore not in trust status, is it not possible to recommend, even in those circumstances, that those programs be designed so they could benefit those tribes which have land in fee simple title?

There may be some instances where, if the Secretary refuses, for whatever reason, to consider favorably the lands acquired in fee simple title, these might be the only lands that the particular tribe might have, cannot they move then to trust status?

It may well be that the tribe will not seek any assistance whatsoever in its land acquisition effort. Would you address yourself to that circumstance?

Mr. **Hall.** If I understand you, do you mean mandating a policy which would set down criteria for accepting the interest as well as not making that a requirement for making moneys available for buying land?

Commissioner **Borbridge.** I am not certain, Mr. Chairman, as to the details of the concerns that I have, because I have not had an opportunity to read this before. I am not certain that it necessarily fits into this specific section. My concerns may more appropriately fit into another section.

But, again, I can well envision that there may be tribes that may not have owned trust lands initially and may then acquire land in fee simple. It would seem to me that such a tribe, being a repository of tribal sovereignty and wanting to protect its primary land resource, should have that desire and status recognized by the Federal Government and be eligible to receive certain assistance.

I am not absolutely sure that this is the appropriate section, but it certainly fits into the general concern that the Commission has relative to those lands which are owned by the tribe.

Mr. **Hall.** The way we have chapter 4 drafted, with respect to the trust responsibility, that is not tied, necessarily, to lands at all in being a trust. The benefits of that responsibility, the way we have that chapter currently drafted, are that it may have lands in fee but not trust.

However, I think with regard to the outright protection of the Federal Government of those lands it should be placed in trust.

Now, how we could deal with that would be to mandate the Secretary of the Interior, or the new consolidated agency, to set forth the criteria where the presumption is that lands are acquired by trust, and thereby the protections and services would flow from that automatically and be granted.

Commissioner **Borbridge.** All right, then, just to be certain the recommendation encompasses a circumstance in which the tribe, having acquired land, perhaps in fee simple title, might wish to request that its land be placed in trust status. Trust status could already pertain to other lands held by the tribe or, conceivably, this could be the first land acquired by a hitherto landless tribe.

What we are stating here is that we want a recommendation which assures that there is a presumption on behalf of the tribe which is requesting that its land be placed in trust status. Is that correct?

Mr. **Hall.** Yes; the presumption should be there. If the Secretary refuses to accept any trust money, then it should have to justify and the tribe would have other avenues available to it.

Commissioner **Borbridge.** All right.

Mr. **Hall.** Recommendation No. 5 on page 18: Congress should enact legislation which establishes the priority of Federal programs benefiting Indians. This is to encourage development of a system of tribal economies that is aimed at the concept that if tribal sovereignty and self-determination really mean anything, that it means tribal economy.

The program should recognize that and not merely be short-term, band-aid, social programs exclusively.

Recommendation No. 6: Congress should appropriate funds directed to the tribes to enable them to hire the necessary technical personnel to survey tribal needs for water, timber resources, mineral resources, and educational needs as they relate to tribal resource development programs, wildlife and fisheries potential on the reservations and watersheds, potential revenue that could be derived from tribal development of agricultural and grazing enterprises, and the viability of establishing tribal credit unions, to bring together the savings of tribal members.

Commissioner BORBRIDGE. If I may interrupt, I have a question which relates to what I proposed earlier.

In section C, "mineral resources ," and under "reservation," section 10, let's assume that the tribe has recommended that the land that it has acquired be placed in trust status. Let's say that this does not occur. Now the tribe still has the lands. It is still desirous of having whatever assistance may be available to it as a tribe.

It has tribal sovereignty and therefore an entitlement to certain assistance. Are we predicating assistance to tribes holding land on the basis that they must be reservation or trust lands?

Mr. TAYLOR. Mr. Commissioner, all the way through this draft proposal we have used that provision. Perhaps, in view of your comments, it would be appropriate to alter this word "reservation" to "tribally owned resources." That might save our problem all the way through this.

Commissioner BORBRIDGE. Thank you.

Mr. HALL. Recommendation No. 3 is in effect an alternative to No. 6 and that, for one reason or another, the tribe does not want or does not feel that it has the capability to conduct these surveys of resources itself, then No. 3 would provide for authority within the Department of the Interior necessary for the tribe.

Chairman ABOUREZK. Are you on No. 6 now, Gil?

Mr. HALL. No. 7, Mr. Chairman.

Chairman ABOUREZK. Did you skip No. 6?

Mr. HALL. If we didn't finish with No. 6, then we will go back to it.

Chairman ABOUREZK. May I go back to that? I just have one change I would like to suggest. It is more of an editorial change.

It says that Congress should appropriate funds directly to the tribes. I would like to say that Congress should mandate assistance to the tribes.

I will give my reason for that. I think when you start saying appropriate funds directly, you throw up the red flag and I think this is the same thing, essentially.

Commissioner WHITECROW. Isn't that process already available through Public Law 93-638 contracting?

Chairman ABOUREZK. Yes.

Commissioner WHITECROW. And if Congress mandates appropriation of the money for this, then they can have the contract.

Chairman ABOUREZK. They are saying the same thing, but you are going to avoid somebody getting up and saying, "Well, we can put a dollar cost on this now, because we know what this is going to take."

It seems to me it is throwing up a red flag. The money may already be appropriated.

Commissioner WHITECROW. How would that read?

Chairman ABOUREZK. Congress should mandate sufficient assistance to tribes.

Is there objection to that amendment?

Without objection, the amendment is approved. All right, then, if you want to go onto No. 7.

Mr. HALL. As I was saying, No. 7 is intended to be an alternative to No. 6. If, for some reason, the tribe does not feel as if it can, or it does not want to, conduct the survey of resources themselves, then No. 7 authorizes the Department of the Interior, upon the request of the tribe, to conduct it for them.

Chairman ABOUREZK. I think with the language change, that would even include that, and you probably wouldn't need No. 7 at all.

Is your reading correct, of that?

Mr. HALL. That is correct, Mr. Chairman.

Chairman ABOUREZK. Then I move to amend No. 7 by striking it in its entirety.

Is there objection to the amendment.

Without objection, it will be done.

Mr. HALL. Recommendation No. 8: Congress has set forth a policy that the ultimate goal and role of the Federal Government in management of Indian resources, is to insure that the tribes have the power and the financial resources to control development of mineral, water, and forestry resources on Indian reservations.

To implement this policy—that perhaps should read: The consolidated Indian agency—because that is the term we have been using elsewhere in the report.

Chairman ABOUREZK. All right. Do you want to amend that to say that?

Mr. HALL. Yes.

Chairman ABOUREZK. All right; without objection, that will be amended as read.

Mr. HALL. Should review existing resource leases to determine the compliance with Federal law and sound management principles and determine whether or not the Indian owners are receiving a fair return on their leases, and (b) implement programs to make available to the tribes, the funds, training and assistance for them to exercise such control.

Again, I intended to put in the hands of tribes the necessary funds and expertise to manage their own resources. Recommendation No. 9: Congress should authorize and appropriate funds to the Federal agency——

Chairman ABOUREZK. Can we put in, "Congress should mandate that the administration establish training programs"?

Is there objection to that amendment? If not, the amendment will be so ordered.

Mr. HALL. That the administration establish training programs in technical fields relevant to reservation resource development.

Recommendation No. 10; the following page: In order to create an atmosphere of stability in which reasoned arguments and plans for future allocation of fish and wildlife resources may prevail, Congress should by resolution clearly state that it is not the policy of Congress to abrogate Indian hunting, fishing, and trapping rights.

Now, in reality, this concept is already in a chapter for Indian trust—the trust responsibility chapter. But this is intended to emphasize the importance of that, and to tie it directly into the resource question.

Chairman ABOUREZK. I have no objection to that. I think you ought to just switch the sentence around, so that the beginning of it should read that Congress should, by resolution, for the reasons as you state.

You were doing so well there for awhile.

Mr. HALL. This came up about 2 o'clock this morning when we fell apart on style.

Commissioner WHITECROW. I would change the reading of that paragraph then.

Strike out "in order to," to "make prevail."

Chairman ABOUREZK. To change it around, the sentence should begin with: "Congress should by resolution clearly state," then at the end after "trapping rights," then put the first part of the sentence.

Mr. HALL. Yes, sir.

Recommendation No. 11—to be honest with you, I think there is some difficulty with the format here. In recognition of the significant impact which international considerations have on Indian rights, specific provisions should be made for Indian representation on such bodies as the International Pacific Salmon Fisheries Commission and the National Marine Fisheries Services of the United States.

Chairman ABOUREZK. Are those congressionally established Commissions?

Mr. HALL. I don't know, sir.

Chairman ABOUREZK. My question is: Are these two agencies established by Congress?

Mr. HALL. I don't know.

Mr. TAYLOR. Mr. Chairman, I don't know, but I am sure there are similar types of agencies. I think that this recommendation is intended to reach a broader category. It says, "such bodies as."

Chairman ABOUREZK. If they are not congressionally established, I don't think you can mandate that.

Mr. TAYLOR. Perhaps we should revise this then, "that it should be established."

Chairman ABOUREZK. All right; would you do that?

Then start the recommendation out by saying, "Congress should provide."

Mr. HALL. Right.

Chairman ABOUREZK. Is that agreeable with everybody?

All right; go ahead.

Mr. HALL. Recommendation No. 12: Federal fish and wildlife programs, with State cooperation, should include tribal participation.

The form should be changed around in the second sentence. Congress should deny Federal support for Federal fish and wildlife programs if States refuse to cooperate with tribal governments.

That is not really as clear as it could be. It is intended to go to the question of clearly established Indian fishing and hunting rights in a particular State and State governments refusing to sit down and negotiate the problem areas with the affected tribes.

Chairman **Abourezk.** I wonder if there is a different way to do that or say that?

Mr. **Taylor.** This was a considerable softening from the first draft.

Chairman **Abourezk.** I wonder if you said, "Congress should mandate tribal participation in Federal fish and wildlife programs, in cooperation with States, providing sanctions in the event States refused to cooperate."

I think that is the way most Federal sanction legislation is drafted anyhow.

Just say, "providing sanctions." If a State doesn't pass a billboard law, 10 percent of their highway funds are taken away from them; so if you just say "providing sanctions." Congress, most likely, if they agreed to this section, would say, "All right, let's do it like we did the highway law and the billboard law."

Mr. **Taylor.** Would it be appropriate to, perhaps, allude to that as an example of the sanction that maybe——

Chairman **Abourezk.** I don't think you need to. I think it is enough to say, "for appropriate sanctions." That is all they have done. Every time they have sanctioned something, that is all they have done—taken away 10 percent of their money, motorcycle helmets, whatever.

Mr. **Hall.** In reality, that is probably the sanction we end up with anyway, reduction of money.

Chairman **Abourezk.** If you could change it to that, I think it would be a better reading section. You would get done exactly what you wantd to get done.

Commissioner **Whitecrow.** How would that read then?

Mr. **Hall.** The way I have it sketched, "Congress should mandate tribal participation in Federal fish and wildlife programs, with State cooperation."

Chairman **Abourezk.** With the cooperation of States.

Mr. **Hall.** With the cooperation of States.

Chairman **Abourezk.** Providing sanctions for any State which refuses to enter into such cooperative agreements or enter into such cooperations.

Recommendation No. 13: I don't exactly know what you mean by, "when the State enacts a law which may interfere with Indian hunting and fishing rights."

Aren't those federally established rights that the State can't interfere with anyhow?

Mr. **Hall.** Legally, that is correct, Mr. Chairman. They can't as a practical matter. Of course, they do in circumstances, but legally, and again, under chapter 4 of the trust chapter, the Federal Government would have the obligation to step in and protect the tribe in such circumstances.

This was really intended to be a measure to forgo litigation of that nature.

Chairman **Abourezk.** I don't think you can do it, is what I am getting at. You can't, unless you have some kind of sanction provided by the State. There is no way you can stop them, or no way you can put in a review.

The provision on the Federal level—I think it would be illegal, or just would not work.

Mr. HALL. I had some reservations about that myself.

Chairman ABOUREZK. You could be tossed out of court.

Mr. TAYLOR. I would be a little concerned that this may, in fact, weaken the tribal position. So I would be in full accord with this.

Chairman ABOUREZK. I would recommend striking recommendation No. 13, for the reasons we just discussed.

Is there objection to that amendment; if not, recommendation No. 13 is stricken.

Mr. HALL. Recommendation No. 14: Congress should appropriate money directly to the tribes for the expansion or establishment of fisheries management and enhancement programs. Funding should be long term to enable tribes to do the necessary planning for a stable, rational, fisheries program which would include "a" through "f", or some suggestions of what those plans should include: The assessment of the economic potential; the establishment of overall goals; application of proven fishery and agriculture methods; definition of training needs; upgrading of water resources; and environment for fisheries production; and establishment of fisheries resource allocation between Indian and non-Indian users and establishment of harvest levels to prevent overfishing.

Commissioner BORBRIDGE. Mr. Chairman, again, I would raise the same question with respect to recommendation No. 14 that I had raised previously.

Are the programs so designed as to make them solely applicable to reservation lands or tribally owned lands?

Mr. HALL. They should not be, particularly since the language in No. 14 should be changed to be consistent with the ones above.

I think probably Congress should mandate—no, we can't mandate the tribes. I think Congress should appropriate money directly through the tribes. That is not limited to reservations though, Commissioner, not at all.

It is aimed at tribal enterprises.

Commissioner BORBRIDGE. I was directing your attention to section 14A.

Mr. HALL. "Assessment of tribal fishery economics potential for each reservation"—I see, thank you.

Commissioner WHITECROW. I have a question here——

Mr. HALL. Excuse me, the same thing with C also.

Commissioner WHITECROW. I thought you were finished.

Mr. Chairman, we are not limiting here just fisheries management and enhancement programs. What are we calling enhancement programs?

Chairman ABOUREZK. Restocking.

Mr. HALL. I think that is intended to be restocking; yes.

Mr. TAYLOR. It could well go beyond that too. The Lummi agriculture requires considerable construction effort. I think the term "enhancement" would just depend on the project and its feasibility, and what assistance might be necessary to help it get underway.

Commissioner Whitecrow. I wonder if there might be a better word to use than "enhancement," because that leaves me a little bit bland; "to elaborate" or "to expand," perhaps.

Mr. Hall. Establish an expansion of fishery programs?

Chairman Abourezk. Can you think of a better word, how about "improvement"?

Commissioner Whitecrow. "Improvement of expansion programs development," that is wide open.

Chairman Abourezk. I just had a lawyer come up and say anything necessary and proper.

Commissioner Whitecrow. That sounds better.

Mr. Hall. Shall we try "improvement"?

Chairman Abourezk. I don't know, how does that sound?

Commissioner Whitecrow. Improvement and development.

Mr. Hall. "Establish the fishery management and development programs"?

Chairman Abourezk. Wait a minute. You have a word in here already that does it. "Congress should appropriate money for the expansion or establishment of fisheries management." It seems to me the word expansion or establishment does it all already.

Mr. Hall. Strike the last three words of that?

Chairman Abourezk. Strike "and enhancement programs." I think that takes care of it.

Commissioner Whitecrow. Is there any question if appropriations went directly to the tribes here?

Chairman Abourezk. It seems that is proper in that context; it doesn't jump at me like those other ones did, unless you have some objection to it.

I think there is another way to say that. The thing is I can't think of another way to say that.

Commissioner Whitecrow. I like it.

Chairman Abourezk. I think, as far as I am concerned, it is all right. My political red light didn't turn on when I read that.

Mr. Hall. So we are striking the last three words of that sentence?

Chairman Abourezk. That is right; and No. 15—we agreed on that a long time ago.

Mr. Hall. That is right. That is just a reemphasis on it, it is particularly pertinent in this area.

Chairman Abourezk. Yes; I think "mandate the Secretary of the Interior," instead of using all those other words.

Mr. Hall. To assist the tribes in developing their own water codes.

Chairman Abourezk. Are there other recommendations that we have to go through now—OK, yes; there are 17.

Mr. Hall. We have 17 through 23, and I think we can get through all of those relatively quickly.

Chairman Abourezk. All right, go ahead.

Mr. Hall. No. 17 deals with management of the trust funds by the Bureau of Indian Affairs. I think many of the recommendations come directly from the manager of that office in the BIA, which has identified to us certain problems which interfere with certain statutory problems which interfere with his capability to get the maximum amount of interest on tribal trust funds.

They do, generally, a very capable job and this, recommendation 17, is intended to relieve him of those statutory restrictions so he might do a better job of investing Federal trust funds.

Concepts in "g" particularly, is not related to his management necessarily. It suggests that tribal participation in trust funds management should be encouraged and implemented with an active participation on the part of the tribe, in the way those moneys are invested.

Commissioner WHITECROW. Do we need to spell out the activity of the tribe in that participation?

Mr. HALL. Well, I am not so sure. I think it would be rather difficult to do, Mr. Commissioner, for two reasons.

One is how much management is involved in there is really the option of the tribe, more than anything. Even today, to some extent, they can take a much more active role and usually do.

I don't know how more specifically we could get that in there without inadvertantly restricting what some of the participation of that particular tribe might take in that management program.

Commissioner WHITECROW. OK.

Mr. TAYLOR. I would think, also, Commissioner Whitecrow, that this recommendation 17(g) is relevant to the provision in tribal government, authorizing tribes to override with secretarial disapproval.

I think, what you are thinking is the authority of the tribes, that its funds be deposited in a particular bank or institution.

This "g" is not intended to reach that, but there may be broader elements of this.

Commissioner WHITECROW. Actually, the discussion we had last week in regard to allowing a tribe to override and accept the responsibility of overriding—this would just be an elaboration of that attitude, would it not?

Mr. TAYLOR. Yes; it would interface with the proposal in the tribal government chapter.

Mr. HALL. If I could break just a moment, I want to introduce Miss Eileen Stillwaggon, who is an economist on this staff, and worked on most of this chapter.

Recommendation No. 18: Congress should enact legislation enabling tribes to issue tribal bonds in the same manner that cities issue municipal bonds, with the same tax immunities.

There have been previous proposals, dealing—there may very well be one currently pending in the Congress. There is no reason at all why the tribe should not be able to issue tax free municipal bonds on the same basis that any other governmental instrumentality can.

Recommendation No. 19: Congress should authorize appropriate Federal agencies to respond to tribal requests to investigate the possibility of tribal participation in World Bank assistance.

I think a little bit better wording on that would be to investigate the possibility of tribal eligibility for World Bank loans.

Chairman ABOUREZK. Yes; we will adopt that amendment without objection. Is that it, Gil?

Mr. HALL. I think we have four more we can do very quickly.

Chairman ABOUREZK. What page are you on?

Mr. HALL. Page 23.

Chairman ABOUREZK. I don't have page 23.

Commissioner **Whitecrow**. Mr. Chairman, how would No. 19 read then?

Mr. **Hall**. It would read: Congress should authorize appropriate Federal agencies to respond to tribal requests to investigate the possibility of tribal eligibility for World Bank loans.

Recommendation 20: Amendment of the Internal Revenue Code—all of these, 20 through 23, deal with some statutory amendments which facilitate the taxing programs which the tribe could institute.

Amendment of the Internal Revenue Code and the Federal tax laws to reflect a general Federal policy of support for tribal self-government and economic development by a construction statute in which a liberal interpretation is given to congressional intent in exempting tribes from Federal taxation. This is intended to meet the problem of a great deal of case law dealing with the question of whether Congress fully intended to exempt tribes from specific Federal taxation statutes.

Providing that, for purposes of Federal taxation, Indian tribal governments will receive the same benefits and status for all purposes as are accorded State and local governments.

Again, that is intended to treat a tribal government on the same basis as any other governmental unit with respect to Federal tax laws.

Chairman **Abourezk**. May I back up to No. 19?

How do you refer to the Indian agency in here?

Mr. **Hall**. The consolidated Indian agency.

Chairman **Abourezk**. All right, instead of Congress doing that, shouldn't the consolidated Indian agency?

Mr. **Hall**. The reason I said appropriate Federal agency is because I am not too sure, myself, as to whether the Department of the Treasury or some other agency might be involved in some sort of thing like this.

Chairman **Abourezk**. But you are asking for investigation of the possibility there. I think the Indian agency could do that, then, if they had to go to the Treasury Department for action, that would be fine.

Mr. **Hall**. OK.

Chairman **Abourezk**. It doesn't seem proper that Congress should get involved in the investigation of that. It seems that that is more appropriately an administrative function.

Is there objection to that kind of an amendment?

Commissioner **Whitecrow**. How would that read?

Chairman **Abourezk**. It would read: "The consolidated Indian agency should investigate the possibility," of what?

Mr. **Hall**. "To respond to tribal requests to investigate the possibility of tribal eligibility for World Bank loans."

Chairman **Abourezk**. Is that all right with everybody?

Commissioner **Whitecrow**. I would like to tie that a little bit stronger, if I could.

The consolidated Indian agency could turn that down and I think we should have some requirement in here that would make them respond a little bit more thoroughly than just to say, "No, I am sorry, that can't take place."

I think that if we should have a turndown on this—this World Bank membership is an area that I have been very interested in insofar as providing a tribe with ample opportunity for loans that would be available for the development of a nation.

We have recognized the internal element of sovereignty. I have checked with the World Bank. They indicate that if the Congress of the United States would enact legislation authorizing a tribe to become a member of the World Bank, because of the unique legal relationships that a tribe has, that they would accept the tribes as members in the World Bank, which would make them eligible for these long-term, low-interest loans for underdeveloped nations. I think we really need to have this a little stronger in here because, knowing past congressional movements, we can make all of the vast recommendations necessary, but let's all face reality.

How assured are we that many of these developmental moneys are actually going to come down the pike whereby a tribe, with this kind of financing available to them, could go through this process and assure developmental moneys for it?

It would not be forcing a tribe into World Bank membership. This would be their option.

Chairman ABOUREZK. I think, Jake, for this option, that there should be a recommendation of their eligibility at this point. Then you get into all the other stuff.

Actually, in a couple of years time, the tribes could probably go to the Penobscot and the Passamaquoddy and borrow all the money they need.

Ms. STILLWAGGON. Also, it can't be forced down their throat according to this, because it says the agency will investigate it in response to tribal requests.

Commissioner BRUCE. Why do we limit it to the World Bank? Maybe we should add some other financial——

Commissioner WHITECROW. Any other financial institution?

Commissioner BRUCE. Yes.

Chairman ABOUREZK. You could put "international financial institutions" instead of "World Bank." That would take care of that, but it seems to me that if you go beyond what we have said, you are complicating an issue that doesn't need to be complicated. That is my view of it.

Commissioner WHITECROW. We will then provide a process whereby at least it can be investigated.

Chairman ABOUREZK. I think that was the intention of the section anyway.

Mr. HALL. At this point we don't have any idea of what tribes will be eligible.

Commissioner BRUCE. Who is we?

Commissioner WHITECROW. I just want to make this a matter of record, Mr. Chairman.

I have been involved in this process and have requested staff and task force personnel to investigate this possibility, since last April, a year ago.

Still, we have had no investigation from our staff on this and I want to make that a matter of record: That our staff or our task force personnel did not fully comply insofar as I am concerned with this request.

Mr. HALL. So, are we with, "Congress should authorize the consolidated Indian agency," or should the recommendation be "directed to the agency"?

Chairman ABOUREZK. Directed to the agency, I think, and call it the international monetary institutions.

Ms. STILLWAGGON. Or international financial institutions.

Chairman ABOUREZK. Yes; that would not limit it only to the World Bank. All right, without objection, that amendment will be accepted.

Commissioner WHITECROW. Would you read that back, sir?

Mr. HALL [reading]. "The consolidated Indian agency shall respond to tribal requests to investigate the possibility of tribal eligibility for loans from international financial institutions."

Ms. STILLWAGGON. They can also get grants, so don't restrict it to loans.

Mr. HALL. Grants and loans?

Chairman ABOUREZK. If you said tribal participation——

Mr. HALL. If we could change that to eligibility?

Chairman ABOUREZK. Eligibility of tribal participation; that takes in grants and loans, doesn't it?

Commissioner WHITECROW. "The consolidated Indian agency shall respond to tribal requests to investigate the possibility of tribal eligibility for loans and grants from international monetary agencies."

Mr. HALL. "International financial institutions."

Chairman ABOUREZK. OK, next section.

Mr. HALL. Unless there are questions, we covered No. 20.

Chairman ABOUREZK. No. 21 is next.

Mr. HALL. No. 21:

> Congress should provide appropriate legislation consistent with Federal Indian policies of tribal self-government, and economic development to remove State taxation of Indian reservation residents, and off-reservation Indian enterprise on land held in trust for Indian tribes or people, where such taxation is inconsistent with the announced Federal Indian policy, including leasehold interest tax.

Chairman ABOUREZK. Isn't trust land already exempt from Federal income taxes and from State taxes?

Mr. TAYLOR. It is exempt from State taxes. Trust land is exempt from Federal income tax in certain circumstances. It is subject to it in certain others.

Depending on whether the person, let's say, is farming a parcel of trust land, whether he is the owner of the land, or the lessor or the lessee, whichever it is——

Chairman ABOUREZK. The Indian person is deriving income from the trust land—that is my understanding.

Mr. TAYLOR. Yes.

Chairman ABOUREZK. Does that need to be changed? If that is the law now; does there need to be a recommendation?

Mr. TAYLOR. Yes. There have been questions raised in certain types of land ownership. There was a Federal IRS criminal prosecution of a woman in North Carolina—a Cherokee—who was operating a motel on a parcel of tribally assigned land, and the Internal Revenue Service said the exemption only applies to trust allotted land.

Chairman ABOUREZK. Was that in trust—that assigned land?

Mr. TAYLOR. It was tribally owned and assigned to her for her use. Actually, they got a conviction of her, but on appeal, it was reversed because the Interior Department had been advising her that she did not owe these taxes.

Chairman ABOUREZK. So the status of the law is what?

Mr. TAYLOR. It is still rather cloudy on that because the appellate court vacated and reversed the criminal conviction, but said they were not passing judgment on civil liability.

Chairman ABOUREZK. Then you can leave it in if there is a question.

Mr. HALL. Recommendation No. 22 should have some slight revision. It should read:

> Congress should repeal statutes which authorize State taxation of Indians with respect to gasoline on the reservation and State taxation of mineral production on leased Indian lands.

Chairman ABOUREZK. No. 23 is not a complete sentence.

Mr. HALL. That needs revision also—that was even later last night than the previous one.

That should be:

> Congress should enact legislation which invalidates any State or local taxation which is inconsistent with any Indian tribal government taxation scheme designed to implement announced Federal Indian policy.

Chairman ABOUREZK. All right, is that the extent of your recommendations in this chapter?

Mr. HALL. It is.

Chairman ABOUREZK. Any statements or comments? If not is there a statement to adopt this chapter?

Commissioner BORBRIDGE. I so move.

Commissioner DEER. I second it.

Chairman ABOUREZK. It is moved and seconded.

All those in favor, raise your right hand. With a vote of six to nothing, the section is adopted.

Ernie, did you say you could do this other chapter in a few minutes?

Mr. STEVENS. Yes.

Chairman ABOUREZK. As soon as we do this, at 11:55 a.m. we will recess until 1:45 p.m. I want to announce the presence in the meeting room of Nicholas Sapiel, governor of the Penobscot Tribe; Wilfried Pearson, lieutenant governor of the Penobscot; Francis J. Nichols, tribal governor of the Passamaquoddy, all from Maine; and their attorney, Tom Tureen is somewhere on the telephone. Oh, here he is, he has given up the telephone.

I understand there have been arrangements made for the Maine people to have lunch with the Commissioners, so the staff has advised me that if you all go through the cafeteria, down B level in this building, and go to room B-369, you can all eat lunch together during lunch period. In fact, you can follow Max Richtman.

Max, are they going to follow you?

Mr. RICHTMAN. Yes.

Chairman ABOUREZK. Raise your hand so everyone can see you.

All right, if you follow the leader down there, he will take you to lunch.

Commissioner BORBRIDGE. Mr. Chairman, I think it is important that he takes us to the right room so that we do not get lost.

Chairman ABOUREZK. Ernie, are you ready?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. How long do you think this will take, Ernie? Do you have any idea how long this will take you?

Mr. Stevens. About 5 minutes, if you don't pick on me.

Mr. Hall. I believe the only part that was unsettled at the end of the last meeting was the specific recommendations on the independent agency.

Mr. Stevens. On page 65 of our technical assistance recommendations, the Commission recommends:

That the executive branch coordinate efforts to provide for the direct administration of contract funds by Indian people.

The executive branch coordinate and consolidate all technical assistance efforts into a single department or agency.

The executive branch establish a national provisional and technical Indian skills bank administered by Indians.

The executive branch direct all agencies to establish a model of national Indian technical assistance centers, consolidating personnel with technical assistance grants, and contracts. Such consolidation is unparalleled to existing BIA service units, to test the feasibility of the independent agency service center.

Commissioner Bruce. Ernie, would you explain how that would work and why this could be done out of the area offices?

Mr. Stevens. The technical assistance can't be provided by most of the area offices because they are not deep enough in specialists in technical areas.

Most of the successful areas by tribes has usually been done when they were able to somehow get contract or grant funds or even foundation moneys to hire technicians—fisheries are an example.

There are some specialists throughout the Bureau of Indian Affairs but there are not enough to staff each area office. Additionally, each area office in the Bureau is primarily in the business of administering and overseeing or supervising various functions of the Bureau and relationships with the tribes.

Most of them are not technicians. In the area of economic development, particularly in national resources, the notion of such a center would be to have it run parallel or as to not interfere with the day-to-day operations of the Bureau. But yes; just a technical assistance project-by-project effort whereby, on a priority basis, a technical force in specific areas could go in and work with tribes; and then the idea about being an independent agency possibly through the Intergovernmental Personnel Act and other kinds of devices, it could get a mix of Bureau, HEW, and other kinds of agencies in one facility to test the independent agency approach.

This could be accomplished by the Intergovernmental Personnel Act, transfer of funds, and you of course, would honor the intent of the funds. Then you would get personnel and grant and contract moneys, all administered from one point, and would test the independent agency approach.

Commissioner Deer. Mr. Chairman, I would like to have more discussion on this very important recommendation: The executive branch coordinate and consolidate all technical assistance efforts into a single department or agency.

Is it outside of the Department of the Interior, on a higher level of Interior: I think this is an extremely important recommendation and we need full discussion on this.

Chairman **Abourezk**. OK, if that be the case, I think we had better recess now, because I have got to get over to my meeting. We will take it up after lunch. We are far enough ahead, so if there is no objection, we will recess until 1:45 p.m.

[Whereupon, at 11:55 a.m. the meeting recessed, to reconvene at 1:45 p.m.]

AFTERNOON SESSION

Chairman **Abourezk**. The Commission will resume.

Ernie, do you want to go ahead?

Mr. **Stevens**. We just finished talking about technical assistance, and Ada——

Chairman **Abourezk**. Wanted to discuss it.

Before you begin that, Sam Cata, from the Pueblo conference, has just delivered the Pueblo commission report to the Commission.

This is a report from the 19 Pueblo governments of New Mexico. I just want to insure that the staff gets the Pueblo recommendations and they be considered in the draft report.

We appreciate it and would like to express our thanks to the All-Pueblo Council for the work they have done.

Ada has a request she would like to make.

Commissioner **Deer**. First of all, I would like to say how glad I am, as an individual Commissioner, to receive this report from the All-Pueblo Council. I look forward to reading it.

We certainly appreciate the effort and the time of the All-Pueblo Council in making this available to us.

Second, Eileen, who worked on our economics report—our time is running out, she really didn't have sufficient time to present—is a trained economist with advanced study in this area. I know that she has spent a lot of time and effort working on the report for the chapter on economic development.

As a suggestion, I would like to have the unedited chapter that she wrote submitted to the Commissioners so that we could review it and make our judgments from that.

Chairman **Abourezk**. OK, that is a good request. If you will do that——

Ms. **Stillwagon**. Yes; I will do that.

Commissioner **Borbridge**. Mr. Chairman, with respect to the agenda which will establish those matters which come before us the rest of the day, I would urge the scheduling of the discussion of the land claims of the tribes from Maine so that they would occur at such time that the Commission quorum is still present.

Chairman **Abourezk**. We want to finish everything we can before Louis has to leave.

Commissioner **Bruce**. I have to leave at 2:30, Mr. Chairman.

Chairman **Abourezk**. You have 5 minutes, Ernie.

Commissioner **Deer**. We were talking about the Maine recommendation, Mr. Chairman, regarding the Federal administration recommendation. I forget what page we were on.

Mr. **Stevens**. Page 65.

Commissioner **Deer**. I previously asked the question and asked for some discussion on that item; whether or not the separate department would be completely separate or within the Department of the Interior. If it is of such major significance to Indians, I think we have to have a full discussion on this.

Mr. **Stevens**. Commissioner, are you referring to the whole council as an independent agency?

Commissioner **Deer**. Yes.

Mr. **Stevens**. This recommendation doesn't have to do with that. This is having all the technical assistance consolidate. It is contingent on the independent agency and this is the technical assistance section.

The only other part I have is the recommendation relating to the independent agency. If we could move onto that, that would be the place to talk about it.

Commissioner **Deer**. OK.

Mr. **Stevens**. That is on page 101.

Chairman **Abourezk**. Have we already taken up the independent agency?

Mr. **Stevens**. We just have to go over the wording, sir.

Chairman **Abourezk**. Are you done with these recommendations?

Mr. **Stevens**. Yes. Remove page 102 please, while we are there?

Commissioner **Whitecrow**. Remove all of page 102?

Mr. **Stevens**. Yes, sir. I wanted to say, before I read the recommendation, that the recommendation is cast within the context of recognizing that the reorganization authority that is presently being used does not permit the President's Office of the executive branch to establish a separate department.

However, it is cast within the context of asking that the President propose a plan for a separate department.

Chairman **Abourezk**. Under the legislation the Senate just passed, that would mean that when he proposes it, either house can veto that within 60 days or something like that.

Mr. **Stevens**. May I read from the act, sir?

Chairman **Abourezk**. Yes; which act?

Mr. **Stevens**. It would also renew the basic provision of the act in that the types of reorganization plans the President can submit, the President would again be permitted to propose plans to accomplish any of the following. Then it talks about transferring all or a part of an agency or functions to another agency. Abolishing all or part of the functions of an agency, consolidating and coordinating all or part of an agency; authorizing an agency to delegate his functions or changing the name of an agency or title of its head.

The President would again not be permitted to propose plans which accomplish any of the following: Creating a new executive department; abolishing or transferring and so on and so forth.

Chairman **Abourezk**. How do we do it then—does Congress have to authorize it?

Mr. **Stevens**. Yes, sir, but the recommendation that you proposed, that they submit a plan is consistent. The President would put together the plan and submit it to Congress.

Chairman **Abourezk**. Then why don't you add in that: President submit to Congress a reorganization plan or congressional authorization creating a Department of Indian Affairs, or independent agency. Is that proper to do that?

Mr. **Stevens**. Yes, sir.

Chairman **Abourezk**. I think it ought to be made clear.

Mr. **Stevens**. So the Commission recommends that the President submit to Congress a reorganization plan for authorization in creating a Department of Indian Affairs or independent agency.

Initially this new agency will be comprised of the Bureau of Indian Affairs, the Indian Health Service, and other appropriate agencies. It may also be comprised of the staff and functions of the Division of Indian Affairs and Solicitors Office, Department of the Interior and so on.

These would all be at his discretion. The second one is: The President prepare a plan for transferring to the new agency appropriate programs and functions.

Commissioner Whitecrow. Excuse me, Mr. Chairman, back in the recommendations—No. 1, the fourth sentence, the fourth line—where it says other appropriate agencies, I would like to submit an amendment to change "other" to "all".

Chairman Abourezk. Is there an objection to the amendment ? If not, the amendment is agreed upon.

Mr. Stevens. The second is: The President prepare a plan for transferring to the new agency appropriate programs and functions which shall include a review of those programs identified in point 3 of this chapter.

In the interim, the President should establish a temporary special action office within the White House which would be charged with responsibility for preparing the plan for the President.

No. 3: The President designate the Secretary of the Interior and the Secretary of Health, Education, and Welfare to implement and coordinate efforts to evaluate and plan the transfer of various agencies in the event of the establishment of the Department or independent Indian agency.

Chairman Abourezk. I have three suggestions. First, in my copy you have left out the word "and" before independent agency. Did you mean to have that in there; it says "or independent agency".

Second, that footnote doesn't make sense. There must be a word missing out of it. "The President must submit to Congress", is that what you mean to say ?

Mr. Stevens. Yes, sir.

Mr. Hall. There should be a new sentence there.

Chairman Abourezk. Well, whatever.

Third, I think instead of three recommendations, these all dovetail into one. I don't know why they have to be separate ones.

Mr. Stevens. OK.

Chairman Abourezk. You are making one recommendation, basically. Each one follows instead of three recommendations.

Mr. Stevens. We could make them in subparts.

Chairman Abourezk. You don't even need those. It looks to me like it is all part of the same recommendation.

Mr. Stevens. OK.

Chairman Abourezk. It is not any big deal. It is slightly misleading to somebody picking it up and reading it. Those three major recommendations are all the same thing.

Mr. Stevens. We will just strike the Nos. 2 and 3, and there will be three paragraphs of the same recommendation.

Chairman Abourezk. All right.

Are there any other recommendations in this chapter ?

Mr. Stevens. No, sir. We dealt with the separate committee, I believe, at the last meeting.

Chairman **Abourezk**. Yes; we have already passed that. Are there any comments or questions on this section? If not, do I hear a motion?

Commissioner **Deer**. Wait, wait, Mr. Chairman; perhaps in the narrative this was covered, but again, I am very concerned.

If we do, for example, establish a whole new agency, what dangers does this pose to Indian people?

I was thinking, for example, if we had a separate agency out there, it would be very easy for groups to zero in or maybe a hostile Congress to cut appropriations. Since we just got this chapter, we will not be able to read through the whole narrative. Would you comment on that?

Mr. **Stevens**. I think that you are always susceptible, for various reasons, to have the Congress change their attitude and that periodically happens. I would say that, for the most part, it depends on which things are consolidated.

My own feeling on it—and I think this will be up to the discretion of whoever does the planning for the President's Office—is that those things that should logically be in the tribal parts, the Bureau of Indian Affairs, the Indian Health Service, parts of Justice, the separating of the Bureau of Indian Affairs from the Interior Department and taking with it the legal functions now performed by the Solicitor for Indian Affairs, and so on. I think that there are always certain dangers. There are real or imagined dangers in the budget; there are real and imagined dangers about the whole business of their doing away with certain functions altogether.

But, I think the desirable parts of the recommendations more than offset any disadvantage. It enables tribes, particularly, to have a much stronger hand in things. It relieves the pressure of the conflict of interest in the examinations of the things they have been doing in the last 2 years.

The advantages would bring a strong tribal government which would be the greatest protection of all. I know I have taken or made some real changes in my own opinion over this last year. I am absolutely convinced that a strong tribal government would, in effect, protect us for some time if not forever.

That is the greatest protection against the kind of dangers you are talking about, because a strong tribal government can do the types of things that the other local governments cannot.

I am not saying that that doesn't exist. I think it always exists. If we could ever find a way to perpetually seal the situation so that that wouldn't happen to us—that is the only real positive thing that could be done. I don't know how we could do that, but we have that danger now because we have the Bureau of Indian Affairs. To put it this way, I think that they can do that in the Bureau of Indian Affairs a lot easier than they could in an independent or super agency.

I think the agency would be too strong because the Bureau, as it is within the total structure, is still a fairly strong organization.

Chairman **Abourezk**. Any other questions or comments?

If not, is there a motion to adopt this section?

Commissioner **Dial**. I make such a motion.

Chairman **Abourezk**. Is there a second?

Commissioner **Bruce**. I second it.

Chairman **Abourezk**. The motion is made and seconded.

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All those in favor of adopting this section of the Federal administration chapter raise your right hand.

The vote is 6 to 0 in favor of adoption.

Alaska. How long is that going to take? Are there any recommendations on the Alaskan section?

Mr. TAYLOR. There are. I think we might be able to run through this more quickly, but we may have a need for Mr. Bruce's vote on Alaska. I am not sure which one we should take up first.

Chairman ABOUREZK. How long will it take on Alaska?

Mr. ALLAN. Fifteen minutes.

Chairman ABOUREZK. We are going to lose Mr. Bruce before that comes. Well, there is an alternative; we can start Passamaquoddy now. We have called for Don Young to come down and fill out the quorum in case we have any votes. He is here somewhere, so why don't you start in with Passamaquoddy and if you can't vote on Alaska, I don't know what we are going to do with Passamaquoddy.

Mr. ALLAN. Mr. Chairman, the Alaska recommendations could be considered in 5 minutes.

Chairman ABOUREZK. Let's do those then, real quickly.

Mr. TAYLOR. For the record, I would like to introduce Mr. Richmond Allan who is appearing as special counsel on behalf of Commissioner John Borbridge with respect to Alaskan matters.

Chairman ABOUREZK. All right, Richmond, do you want to give us the recommendations? What page are they on?

Mr. ALLAN. Mine is not paginated as yours.

The recommendations commence on page 28. The first recommendation is that Congress shall enact legislation prescribing the order of preference in which applications of benefits under Federal laws and programs will be received from the several kind of Alaska Native organizations qualified as applicants.

The second recommendation is that Congress should enact legislation confirming that the Tlingit and Haida Indians constitute a single tribal entity of which the Central Council is the general and supreme governing body.

Congress should enact legislation confirming that the authority of the Secretary of the Interior to reserve easements on lands to be conveyed to Native corporations under the Settlement Act is strictly limited to definitely defined easements across such lands and at periodic points along the courses of navigable waterways that are necessary to discharge international treaty obligations and to provide access to remaining public lands.

Specifically, Congress should make clear that the Secretary is without authority to reserve any lineal easements along shorelines, any nonspecific floating or blanket easements, or any easements to provide others with any rights to enter upon any lands—including watersheds—to be conveyed to the Native corporations for any purpose other than to cross such lands by defined routes to reach remaining public lands.

Congress should enact legislation confirming that the Secretary of the Interior is not required, prior to conveying lands to Natives and Native corporations under the Settlement Act, to prepare impact statements pursuant to the National Environmental Policy Act.

Chairman **Abourezk.** Why should those transfers be exempted from NEPA?

Mr. **Allan.** Because, as we say in the body of the subchapter, Congress itself has said that 40 million acres should be granted, and by and large has described the areas from which the lands are to be granted.

Chairman **Abourezk.** That doesn't give me the reason why it should be exempted.

Mr. **Allan.** Well, Mr. Chairman, the purpose of NEPA is to require the executive, when it is exercising discretion, to consider the environmental impact of its proposed actions.

Here, Congress has dictated the action and has rather narrowly confined what the executive branch is able to do in carrying it out. Therefore, the basic purpose of NEPA doesn't exist in the case of conveying lands to the Alaska Natives.

Chairman **Abourezk.** All right. The next recommendation?

Mr. **Allan.** Congress should enact legislation requiring the Secretary to convey all lands, estates, and interests in lands that the Natives and the Native corporations are entitled to receive under the Settlement Act no later than December 31, 1978.

Congress should increase its oversight relative to the carrying out of the Settlement Act in general, and relative to the conveying of lands to the Native corporations in particular. Congress should require the Secretary to report to it not less frequently than once every 3 months until it is satisfied that all lands to which the Native corporations are entitled under the act have been conveyed.

Chairman **Abourezk.** Back in No. 5: Is that date of December 31, the same as in the original Native Claims Settlement Act? Does that speed it up or what?

Mr. **Allan.** No; in the act, it is provided that the village corporation shall select their lands within 3 years—that period ended December 18, 1974—and that the regional corporations should select their lands within 4 years. That period ended December 18, 1975.

The act then says that immediately upon the selection of the lands by the corporations, the Secretary shall convey; so Congress——

Chairman **Abourezk.** So we are setting a date, whereas Congress didn't, all right.

No. 7, then.

Mr. **Allan.** Recommendation No. 7: Congress should appropriate funds to provide the advance payments into the Alaska Native Fund that were authorized by section 407(a) of the act of November 16, 1973 (87 Stat. 591), to ameliorate the adverse impact on the Alaska Natives of delay in construction of the Trans-Alaska Pipeline.

The chairman will recall that this is the so-called Buckley amendment to the Trans-Alaska Pipeline Act that provided for advance payments to Natives.

The executive has never requested appropriations to fund that authorization. Congress should take no action in implementing the provisions of section 17(d) of the Settlement Act, or otherwise, that would have the effect of diminishing or impairing the ability of Alaska Natives to make use of any lands or of the products thereof (including fish and animals), for subsistence purposes, or that would have the effect of restricting the uses that Native corporations might make of, or the activities they might conduct on, any land conveyed to them under the Settlement Act.

Congress should enact legislation permanently exempting lands conveyed to Native corporations under the Settlement Act from State and local taxation, so long as they are not developed or leased, and during periods such lands are not productive of income, whether or not they were previously developed or leased.

Chairman **Abourezk**. Does that change the policy established by the Alaska Native Claims Settlement Act?

Mr. **Allan**. To some extent.

Chairman **Abourezk**. How much?

Mr. **Allan**. The act now says that these lands shall be tax exempt for 20 years—so long as they are not developed or leased. This will extend that exemption permanently.

Chairman **Abourezk**. I don't know, I am not convinced that we ought to—I think there was agreement made at the time the Native Settlement Claims Act was passed. I think it would be a breach of faith to pass on that now.

John, what is your view?

Commissioner **Borbridge**. I think, Mr. Chairman, in observing the basic or substantive aspects of what I consider the agreement that was reached under the terms of the Claims Settlement Act, there are a number of instances in which, in my opinion, the Alaskan Natives are suffering grievous harm, frankly, due to circumstances we never anticipated.

No one ever anticipated we would have double digit inflation; yet as a consequence, the present worth of scheduled payments due to the Alaskan Natives has actually been dramatically reduced.

I think too, with respect to this question, that unless consideration is given to extending protection from taxation to lands that are not being developed, pressures may be impacting the Alaskan Natives. They could be forced, if economic circumstances are not good, to place on the market or cause to be developed lands which would otherwise be used solely or primarily for subsistence hunting and fishing.

Chairman **Abourezk**. I think we can leave it in all right, but I am just afraid you are going to run into a buzz saw. Somebody is going to say you are breaking the agreement that was made at the time the act was passed; everybody is subject to double digit inflation—not only in Alaska.

Commissioner **Borbridge**. I know, but I would suggest, Mr. Chairman, that not everyone is subject to the arbitrary, and I think capricious, acts of the executive when it did not act to fulfill the expressed wish of the Congress, which recognized that the Alaskan Natives would be financially damaged if delays in having the Alaska pipeline go on stream were encountered. The executive branch of the Government chose not to fund the Buckley amendment. The Natives were financially damaged due to delays in pipeline construction.

I think there has been an utter lack of good faith to live up to that aspect of the agreement. I would think at this point that what we are doing is approaching this as reasonable people would who are looking for an alternative which would enable the U.S. Government to live up to the expressions of the utmost good faith in fulfilling the Claims Settlement Act; while we, at the same time, as Alaskan Natives, seek to recoup or recount from those things which were promised but were not done or delivered.

I think what this does, Mr. Chairman, is to establish the form and at least to make the record that we considered this to be a concern.

It may well be, Mr. Chairman, that in the actual forum of congressional debate, this may be modified, but at least the record will be established.

Chairman **Abourezk**. OK.

Mr. **Allan**. I might say, Mr. Chairman, to the best of my recollection, that provision of the act did not proceed from anything like an agreement. It was really a policy of Congress. That Congress conceived of this itself. It was not something that Congress, for example, discussed with representatives of the State.

Chairman **Abourezk**. I think you could safely say the whole act was the result of an agreement—because I remember just being on the periphery of it, it was my first year in Congress and I didn't take that much part in the Claims Settlement Act.

I watched them though and I know everything in it was the result of an agreement. There was give and take on both sides. Whatever came out of the act itself, including that provision, was agreed upon by both parties. That is all I am saying, but leave it in, that is fine. I just wanted to mention it.

Mr. **Allan**. Recommendation No. 11: Not later than during the 1st session of the 101st Congress, or 1989, Congress should undertake a comprehensive examination of the condition of the Alaska Natives and of the results of the Settlement Act, with a view, particularly, to determining whether the tax exemptions and the period of inalienability of stock currently provided by the Settlement Act should be expanded or extended.

Congress should conduct hearings to examine the problems that have arisen in interpreting and effectuating section 7(i) of the Settlement Act and to determine whether further legislation is desirable.

Section 7(i), Mr. Chairman, is the section that says 70 percent of all revenues realized by the regional corporations from their timber resources and subservices shall be shared with the other corporations.

Chairman **Abourezk**. Any questions or comments? Jake?

Commissioner **Whitecrow**. Mr. Chairman, I have notes regarding our meeting previously, that one of the recommendations in our previous chapter was that any recognized regional tribal government should be eligible for both self-determination grant funds and contracting which is, as I understand now, not proper or not legal there. I don't find these recommendations now.

Are these recommendations in addition to what we voted upon before?

Mr. **Allan**. No; these are complete replacements. The subject matter of your question is dealt with in recommendation No. 1, which is that Congress should enact legislation prescribing the order of preference in which applications for benefits under Federal laws and programs will be received from the several kinds of Alaskan Native organizations that are qualified as applicants.

Commissioner **Whitecrow**. Then we have that covered in that regard. They are protected there then.

Mr. **Allan**. Yes, indeed.

Commissioner **Whitecrow**. The other note I have is that I can't find in the recommendations here, perhaps it is in recommendation No. 3, in regard to the rights of Alaska Natives to cross Federal lands and to trap on them.

Mr. **Allan**. That subject is contained in recommendation No. 8: That Congress should take no action in implementing the provisions of section 17(d) of the Settlement Act or otherwise, that would have the effect of eliminating the uses that Alaska Natives now make of Federal lands.

Commissioner **Whitecrow**. Being an old boy from out there in the country, I don't really see that in there. We are going to have an awful lot of people reading this that are about the same quality that I am, and I am not trying to demean or belittle anyone.

I don't intend that the majority of the people are about as dumb as I am, however, I think Mr. Commissioner Borbridge, if I were you, I would insist that this be a little more clear so that people like myself would understand it.

If I come up there you might let me trap.

Commissioner **Borbridge**. I think, certainly, Commissioner Whitecrow, that this probably can be clarified in some manner to make it clear and the principle will apply specifically to the type of thing you gave as an example.

Mr. **Hall**. Probably the parenthetical that you have there might meet the problems he has with it; with a slight change in wording. You have "including fish and animals"; you might want to add "trapping and other wildlife subsistence."

Commissioner **Borbridge**. Yes.

Chairman **Abourezk**. The question then is on the motion for Alaska to secede from the Union—now that Congressman Young is here.

Congressman **Young**. Are we going to use "subsistence" or "taking?"

Commissioner **Borbridge**. We are considering which question?

Congressman **Young**. He said you are going to add a word so that it would cover trapping. I don't want trapping to be considered in the specific term of subsistence, because we are going to get into a battle of what is subsistence.

My animal lovers are going to say they don't need this to subsist—that trapping is actually an economic venture and it is—but again, I say they need the economics to have the wherewithal to live.

If you want to call that subsistence—but I don't know. I want us to be very careful that we don't get locked into a box.

The word "taking" might be a better definition.

Commissioner **Borbridge**. All right. Congressman Young, how about having the term "subsistence" include such activities as trapping and so on?

Congressman **Young**. A later date down the road, my good chairman, there will be a time and there will be a pressure within the Congress, I am sure, to say, "all right, the taking of fur is not a subsistence venture," and they might be able to prove that.

I don't want that right taken away from them because it is a way of life for economic game, not like killing an animal and you have got to eat it. That is the thing. I don't think it has put us in a position where we don't have an out.

I know this isn't legislation but it will set precedents.

Chairman **Abourezk**. What section are you on now?

Congressman **Young**. I just got here. I apologize for that.

Mr. **Allan**. Section 8.

Mr. **Taylor**. On page 29.

Chairman **Abourezk**. Why don't you say, "for subsistence or economic maintenance"; does that satisfy, Ed? That ought to take care of the trapping business.

Commissioner **Borbridge**. Yes. What do you think, Donald?

Congressman **Young**. You understand my fear.

Chairman **Abourezk**. Does that language take care of it?

Congressman **Young**. I think it would. If we are going to have a report on this, I think that it does, Mr. Chairman. Counsel understands my beef.

Mr. **Allan**. I certainly do.

Congressman **Young**. I can defend catching of the fish and the trapping of the caribou, but I might have congressional problems later on down the road, because we have already had two or three bills introduced that ban trapping, as you well know.

There is big outside pressure now that we are killing these poor little animals. That pressure is going to increase, not decrease.

I would like to have the recommendation of this Commission that that is not necessarily for subsistence, but it is a way of life. If that will do it, then I don't mind.

Chairman **Abourezk**. Will that do it?

Mr. **Allan**. Yes.

Chairman **Abourezk**. Is there objection to that amendment? If not then that amendment is agreed to.

Mr. **Taylor**. For a point of clarification: What is the amendment?

Chairman **Abourezk**. Economic maintenance—for economic maintenance.

Mr. **Allan**. Let's say: "for economic maintenance and subsistence purposes."

Commissioner **Whitecrow**. Are we including the word trap or anything of this nature?

Congressman **Young**. I don't think we have to.

Commissioner **Whitecrow**. As long as that is clear——

Mr. **Hall**. It says including fish and animals; I would think that would include trapping.

Commissioner **Whitecrow**. To make use of, OK.

Chairman **Abourezk**. Is there a motion to adopt this section?

Commissioner **Borbridge**. I so move, Mr. Chairman.

Commissioner **Whitecrow**. I second it.

Congressman **Young**. May I ask a question?

Chairman **Abourezk**. Yes.

Congressman **Young**. The recommendation, I think it is 12, maybe it is not in the recommendations, maybe it is in the findings, where you take the Secretary to task?

Mr. ALLAN. That is in the finding.

Congressman YOUNG. I think there has been tremendous tail dragging, lame-legged performance. I hope there is no way that this infers that the present Secretary of the Interior—because I would hate to alienate my good friends in the Interior Department and this report is going to come out. What I am trying to say is if you don't think it will alienate them, you know better than I do, and I don't have any objection, but when they read this, they are going to refer to Secretary Andrus and not Secretary Martin or Kleppe, or the Secretary before that, whoever was there.

I just want to make sure we all know what we are doing.

Chairman ABOUREZK. You mean where it says the executive has failed to get appropriations?

Congressman YOUNG. No.

Mr. ALLAN. Finding 9 on page 25, Mr. Chairman.

Commissioner BORBRIDGE. The Commission might add the phrase: "which we trust and anticipate will not continue under the administration of the current Secretary."

Chairman ABOUREZK. I think if you strike that last sentence it will both lay it on the past Secretary and I think the present Secretary ought to know that he wasn't involved.

Congressman YOUNG. How would you do that?

Chairman ABOUREZK. Just strike the last sentence.

Mr. ALLAN. Which infers you have much more confidence in Mr. Andrews than in his predecessors.

Chairman ABOUREZK. Yes; so if you take that out, we are starting fresh anyway.

Congressman YOUNG. Is it not true, Mr. Chairman, that in the findings and in recommendation, it recommends that Congress take a more active role in this claim settlement?

Chairman ABOUREZK. We do that in the recommendations.

Congressman YOUNG. So, if we take out that last sentence, it might alleviate any other problem.

Chairman ABOUREZK. Is there an objection to striking the last sentence in finding No. 9; if not, the amendment is agreed to. Is there a motion?

Commissioner DIAL. I make such a motion.

Commissioner WHITECROW. I second it.

Chairman ABOUREZK. The motion has been made and seconded. All in favor of adopting the section on Alaska raise your right hand.

The vote is 6 to 0 in favor of adopting.

Commissioner WHITECROW. Mr. Chairman?

Chairman ABOUREZK. Yes.

Commissioner WHITECROW. I have a point I would like to point out to make sure our staff is knowledgeable about this. We do need a new table of contents inasmuch as we are inserting a new chapter 12(a) because the current table of contents does not in reality apply to that portion of Alaska.

Chairman ABOUREZK. Yes, Max said this morning there is a professional indexer who is going to do the whole thing.

Mr. HALL. There are a number of changes, you are correct, Mr. Commissioner, all the way throughout the report that are not currently reflected in the table of contents; but will be next week, once it is all gone over for offset printing.

Chairman **Abourezk**. We will now go to Passamaquoddy.

Mr. **Taylor**. Mr. Chairman, we are at the point in the agenda now where we are scheduled to deal with the Passamaquoddy situation in the State of Maine.

Over the lunch hour the Indian Commissioners of this Commission had lunch with the governors of the Passamaquoddy and Penobscot Tribes.

We received a very lengthy briefing on the history of this case. The facts behind it. I think the basic outlines of the case are pretty well known here in Washington and, certainly, by all of the Commissioners in this room.

The essential elements of the case are that the claim arises under the Non-Intercourse Act of 1790 which prohibited the purchase, grant, or conveyance of Indian land unless there was a Federal representative present and had the approval of Federal representatives.

The Passamaquoddy and Penobscot Tribes in the State of Maine are presently laying claim to a very substantial body of land in that State. Originally, I believe their claim totaled somewhere around 60 percent of the land mass of that State. The tribes have had a very difficult legal road getting to the present posture of this case.

It involved bringing an action against the U.S. Government to, I believe, compel the Government to represent the tribes in their claim against the State of Maine.

They won that battle with a decision by the U.S. District Court for the State of Maine that found the Passamaquoddy Tribe was a tribe within the meaning of the Non-Intercourse Act of 1790, and that the Department of Justice could not refuse them representation merely on the grounds that they were not a tribe within the meaning of that act.

The Department of the Interior and the Department of Justice have now examined this case. As a consequence, the judicial order compelled them to consider the claims of the two tribes; and on February 28, 1977, the Department of Justice filed a motion in the case of the *United States* v. *Maine*, asking for an extension of time until June 1, 1977, to file a formal complaint on behalf of both of these tribes.

Now this motion for an extension of time outlines the legal case and the claims of these two tribes. There is a somewhat scaled down claim which I now believe totals somewhere in the area of 40 percent of the State of Maine.

Chairman **Abourezk**. How many acres?

Mr. **Taylor**. I believe it is around 7 million at this point. It originally was around 10 million acres.

Chairman **Abourezk**. What is the exact status of the claim right now? What has been settled in litigation and what has yet to be settled?

Mr. **Taylor**. I believe the point has been settled through litigation that the Passamaquoddy and the Penobscot Tribes are Indian tribes within the meaning of the Non-Intercourse Act that prohibited purchase, grant, or conveyance of lands without Federal approval.

Chairman **Abourezk.** Is that the only thing that has been settled?

Mr. **Taylor.** Yes, through judicial order, I believe.

Chairman **Abourezk.** What remains to be settled?

Mr. **Taylor.** What has happened is that the judicial order was sent to the Department of the Interior and the Department of Justice. They did not refuse representation of these tribes on the simple grounds that they were not tribes. So the administrative process has concluded that they will represent the tribes. That is a legal breakthrough, too.

The posture of it right now is that Justice is preparing to file a complaint. They have filed a motion with the U.S. district court for an extension of time to June 1 of this year, before filing the complaint.

It is a scaled down complaint; it is a cooperative effort by the Department of Justice, the Department of the Interior and the two tribes involved, to signal to the State of Maine a desire to take a course of action which will be least disruptive to the State while still pursuing their legitimate claims.

Chairman **Abourezk.** What are the issues that remain to be decided?

Mr. **Taylor.** Ownership to roughly 40 percent of the State of Maine, which lies primarily in virgin woodland area. It does not even have public roads through a good portion of this land.

Chairman **Abourezk.** There are 7 million acres?

Mr. **Taylor.** Roughly.

Chairman **Abourezk.** That is one issue; is that the only issue or are there others?

Mr. **Taylor.** There is also the issue for very extensive damages from trespass over the past 150 or 200 years.

Chairman **Abourezk.** You first have to establish ownership before you can establish trespassing.

Mr. **Taylor.** That is correct.

Chairman **Abourezk.** All right, what else has to be decided?

Mr. **Taylor.** I believe that is all. There is a question of who the defendants will be.

Chairman **Abourezk.** If there is ownership established, the right of possession, doesn't that have to be decided as well, once ownership is decided?

Mr. **Taylor.** I think the two would go hand in hand. If the ownership is established, possession would follow.

Chairman **Abourezk.** So, you have two major issues.

Mr. **Taylor.** Right.

Chairman **Abourezk.** Having established those issues, what does the Commission wish to say about it? Is there any discussion?

Mr. **Taylor.** Mr. Chairman if I could make two more remarks, I think I can bring the present problem to the correct focus.

The Department of Justice filed the motion I have just described on February 28. On March 1, two bills were introduced—one in the Senate and one in the House of Representatives by the Maine delegation. The gist of these bills would be to have Congress retroactively rectify the land transactions or the land-takings that occurred 110 years ago.

The apparent result of that legislation, if there is retroactive legislation, would be that the tribes land ownership claims would be wiped out as of 150 years ago. It would leave them with no land claims and no claims for monetary damages.

Chairman **Abourezk**. Even for trespass?

Mr. **Taylor**. Even for trespass, if it would withstand constitutional examination, which is part of the problem.

Chairman **Abourezk**. I don't see the likelihood right now of that legislation getting anywhere, but if it were to get somewhere would that be considered what we call a fifth amendment case?

Mr. **Taylor**. That would be a constitutional question, I think.

Chairman **Abourezk**. What is your view on that?

Mr. **Taylor**. I have not really researched this thoroughly. I have discussed the *Tee-Hit-Ton* case with one or two attorneys. Their advice to me on *Tee-Hit-Ton* is that the Congress does have the right to take original title without incurring liability under the fifth amendment. There is not fifth amendment protection.

Now, whether you could retroactively do that, so as to wipe out the trespass claims, is a different issue.

Chairman **Abourezk**. Is the *Tee-Hit-Ton* case on all fours with this one?

Mr. **Taylor**. I think it is distinguishable. It arose in Alaska, but obviously, I have not read that case.

Chairman **Abourezk**. If it is distinguishable: Is it distinguishable on the grounds that you are going back and making a retroactive taking which would then be considered a fifth amendment taking?

Mr. **Taylor**. I think it would definitely be distinguishable on that ground.

Chairman **Abourezk**. Is there anyone else in the room who might wish to comment?

Mr. **Allan**. The issue is now almost squarely drawn in *United States* v. *Atlantic Richfield*, the case that arose out of *Edwardsen* v. *Morton* and Judge Gasch, although it was dicta in his decision in the United States District Court for the District of Columbia, indicated that he thought it would be unconstitutional to deprive a group without compensation of a vested, chosen action which the trespass claims would be.

Chairman **Abourezk**. So then you have gotten that much of a commitment out of one of the courts, that they could not wipe out the trespass; they could wipe out the aboriginal title.

Mr. **Allan**. There is no question that the Congress can extinguish the aboriginal title.

Chairman **Abourezk**. But they can't extinguish the trespass claim. All right, Mr. Tureen?

Mr. **Tureen**. I believe that the ninth circuit court has taken the same position, Mr. Chairman, in their litigation in which they said that in discussing the statute of limitations problem, if the statute of limitations were to wipe out the claim it would raise constitutional questions as well.

Chairman **Abourezk**. Is there any other discussion or questions by the Commission members?

Commissioner **Borbridge**. Mr. Chairman, I would like to comment on the claims of the Penobscot and the Passamaquoddy because I consider them to be, on the basis of what I have read and what I have heard at lunch today and the comments of other attorneys, to be meritorious and substantive. As such, they deserve to be dealt with by all parties involved—the Federal Government and the State government of Maine—in the utmost good faith.

This is a deserved treatment of the claim because they are just and because the assertion that they are making their land rights becomes not only a test of the validity of the land rights themselves which are being asserted by the tribe; but because ultimately such an assertion in the courts and in the congressional forum, becomes eventually a test of the willingness of the Federal Government and the State government to deal justly where justice is so clearly and so patently due.

I am very frankly impressed with the statesmanlike posture which, as I have read the record, has been consistently mainfested by the representatives of the Penobscots and Passamaquoddies. I would strongly urge, based on all that I have read and all that I have heard, that the representatives of the Federal Government and the State government of Maine exhibit these same statesmanlike qualities which, in my view, exemplify a concern—not only for justice, not only for land, not only for the resources and the benefit that might be derived from having justice done; but also, they exhibit the type of foresight that I think the Indians in their land claims have always exhibited.

That is their concern about how relationships will be among all people after the claims are finally resolved. I would hope that the other institutions that are working with the tribes are as statesmanlike as I consider that they have been.

The Indian tribes have consistently sought to negotiate with affected parties, since they have recognized and as they still recognize now, that an equitable and prompt settlement is in the best interests of all concerned.

They have in noways ever sought to separate themselves from the State of Maine. They are acting in a constructive statesmanlike manner as they present these claims.

I must frankly state that I consider the bills introduced in the U.S. Senate, Senate bill 842, and the House counterpart, H.R. 4169, to be reprehensible and not in accord with the highest principles which the American Indian Policy Review Commission has sought to espouse and which principle I know the United States seeks to follow with consistency. I think that even considering the enactment of such legislation would offer a grave concern to the entire Indian nation.

I think it is the view of Indians, largely, that things that can happen to the least of us in a tribal sense can happen to any or all of us.

It is, therefore, on this basis that I see that all Indians have something at stake in ensuring to the degree they can that a just settlement is arrived at on behalf of the Penobscot and the Passamaquoddy tribes.

I would hope, therefore, Mr. Chairman, that it might be possible for the Commission to reach an agreement—which agreement, in the absence of a quorum, and which absence of a quorum therefore, precludes a formal motion that it might be possible to reach some agreement—that we would use our good offices to ensure that these reprehensible bills don't receive prompt hearing and that, perhaps, the recommendations which are presented in the section on the Passamaquoddy and the Penobscot land claims may be considered. The timing of such action might be perhaps timed so as to allow the negotiator representing the White House to have an opportunity to proceed.

I appreciate that we are in the midst of things that are happening and I know that is the desire of all of us to help those things move in a way that would be helpful to those claims.

Chairman **Abourezk.** I wonder if I might just add to that, John. I would associate myself with everything that you said. I think it is highly commendable of the administration to come out as they have with a very positive position on this, to say that we are going to help the tribes because we owe them that duty.

Mr. Lipshutz, a representative of President Carter, has taken an active role in this and will continue to do so. I would say that, speaking only for the Senate Indian Affairs Committee, I do not intend to have any hearings on the legislation that was introduced; at least not in the near future.

If the time comes when we ever have to have hearings it will not just be on that legislation. It will be on the entire question of negotiations of the rights of the Indian tribes in Maine, wherein all sides would be heard adequately and fully, and where the justice of the situation can be aired to the Congress.

It is not going to be any one-sided consideration of that kind of a bill and I don't much like the bill myself. I just want to say that on the record.

It just seems to me that it would be a very one-sided attempt to obviate and preclude any just claim on the part of the tribes.

Now, for how many years have we been saying that the Indians ought to get into the political process and the legal process, and once they are in it they get screwed up against the wall.

That is not very good encouragement for Indian tribes to do that kind of a thing—the same thing we have been encouraging them to do. They are entitled to their day in court, and I commend the Indian tribes in Maine and their representatives who are sitting in this room now, for their efforts to negotiate this matter in a very reasonable and responsible manner.

I further want to say that Congressman Young said he would come back if we had to have a vote, but I would like to recommend, in view of the fact that there is an effort being made by the White House to get the parties together to negotiate, that this legislation has been introduced, and hearings, of course, naturally have been asked for.

But this Commission should not include anything in the report at this time on the Passamaquoddy-Penobscot question for the reason that if we do that there may be an increased demand on the other side to hold hearings on the bill by itself.

I think things are moving along rather well. In addition to that, we haven't had a chance to investigate the thing thoroughly, and while litigation is in progress, it might be better not to make an official statement on this matter, although I think everybody knows how everybody else feels.

Commissioner **Dial.** Mr. Chairman?

Chairman **Abourezk.** Adolph?

Commissioner **Dial.** I agree with the Commissioner from Alaska and also with the chairman on the previous statements.

I would also like to make a statement that in January 1958 the Lumbee Indians of North Carolina in Robeson County broke up a Klan rally which was intended to disgrace Indian people of that area, and tribes throughout the country sent moral support to the Lumbees. We won our case with a Lumbee judge.

Perhaps the Indians of Maine would not be as fortunate, maybe, without an Indian judge, but I would hope they would win their case.

At this time. I must say—I'm not an attorney—but I have followed the *Passamaquoddy* case in the news, and find myself on the side of the Indians. Too often, Indian people of the East are forgotten citizens of this great country. I do not support any action that would make a mockery of the Indian Non-Intercourse Act of 1790.

Commissioner **Deer**. Mr. Chairman?

Chairman **Abourezk**. Commissioner Deer?

Commissioner **Deer**. I concur wholeheartedly. I would like to also commend the Indian people of Maine for their patience, their perseverance, and their belief in working through the system.

I think it is a tremendous example, not only to all Indian people but to all citizens of this country, to work through the judicial system for justice. I would like to point out that the bill that has been introduced has a number of inequities in it which would have tremendous negative consequences to the private home owners and land owners, and I think that if the people of Maine fully understand what this means to them as individuals, that they can make their voices known and heard to their representatives.

We do have, as a Commission, a draft chapter here. It seems to me that we could, as we have with the other chapters in this final report, have some discussion and tentative approval of this so that we could proceed with the work of the Commission since we are under such a time constraint.

Commissioner **Whitecrow**. Mr. Chairman?

Chairman **Abourezk**. Jake?

Commissioner **Whitecrow**. I would like to state that the words that have been expounded here in regard to the Passamaquoddy and Penobscot situation are the type of words that we need to have heard in the hallowed halls, wherever they may be, because this has a direct bearing upon the integrity of our Nation—the United States of America.

Once again we find that through this entire process of congressional consideration we find that the Indian people down through the years, in all cases, have been most patient in waiting for actions to take place from the Federal Government of the United States to respond to those agreements that have been enacted.

The solemn word of the Congress of the United States in many, many instances, we have found in this entire process, the word that was given was not enacted as a result of local politics within each State or within each territory.

We find here, once again, as Indian people have been told down through the years be patient and work through the system and in this particular case we find that the Passamaquoddy and the Penobscot did go through the system. They did win, and now that they have won, the State wants to change the rules.

I think this is indicative of the past history and the relationship of State and Indian tribe concepts. In those relationships I think we need to take this into account. I want to commend the Passamaquoddy and Penobscot for their patience and the maner in which they wish to negotiate.

I personally feel that the issues here are of great importance. It is really a political situation here as to whether or not these issues should come forward. I know, as an Indian Commissioner, I am going to be criticized in the future. I am going to have to stand up and defend the action that this Commission takes.

I want to be able to, at least, say that we considered the Passamaquoddy and the Penobscot situation and that whatever action we take here is to the benefit of all concerned—that being the State and the Indian tribes—and I think we should certainly encourage that all parties concerned negotiate in good faith and come up with a decision that would be just and fair to all persons involved inasmuch as we do have litigation involved at the present time. I would concur in withholding this particular chapter from the report until our next meeting—to have some determination as to how the negotiations between the White House and the State of Maine and the tribes involved come out.

However, I do not feel that we need to turn our backs upon this particular issue. I do feel in our next meeting we definitely need to make some recommendations in this regard.

Commissioner Borbridge. Mr. Chairman?

Chairman Abourezk. John?

Commissioner Borbridge. Just in response to the comment, with which I concur, I would also urge that in this interim period between now and the time of our next meeting that staff could well be directed by the chairman to monitor possible changes in the status of the claims as they occur. They may have some recommendations to be considered which could be acted on by that time. This would insure that we, as a Commission, would be willing to allow things to move ahead.

I join the chairman in commending the desire of the present administration to move in a positive and forthright fashion on this issue. But, for the record, we should state that we want to monitor possible changed circumstances and would consider recommendations if changes should occur. It would be stated very clearly that ours is a very active, ongoing interest.

So, with that addition, I would concur.

Commissioner Dial. Would you keep us posted, perhaps by telephone conversation, rather than by mail, since there is a delay of maybe a week sometimes before I get my mail?

Chairman Abourezk. Yes; I will direct the staff at this time that if there are any new developments each Commissioner should be notified by telephone what those developments are.

Commissioner Dial. I have one question, Mr. Chairman, I want for the record—Mr. Taylor, Mr. Hall, or anyone or maybe you—in the pending legislation; those who support the pending legislation—what do they claim?

Mr. Taylor. In the introductory remarks that appear in the Congressional Record when they introduced the legislation, statements were made to the effect that this would not eliminate claims for monetary damages arising from trespass over the years.

I believe in the preamble of the bill a similar wish is expressed, but then in the actual substantive portion of the legislation is a retroactive ratification which would leave it in a posture where the monetary claims would not be viable, so there appears to be a conflict in the bill itself.

Mr. HALL. The result would be a complete extinguishment of the claim.

Mr. TAYLOR. I might make one other point for the record which is the fact that the plaintiffs in this case—the Passamaquoddy and the Penobscot tribes—have offered to the State of Maine, or made suggestions to them, that they would be happy to substitute the State of Maine as a potential party defendant as opposed to the private land owners, if the State would waive its sovereign immunity and submit itself to the court, in view of the fact they are so certain that their defense is solid.

The State has never made such an offer and this proposed legislation would not accomplish that result either. So the tribes could very well be left not only with having their substantive claims wiped out but not having a defendant to sue in the first place.

There are significant legal problems in this case.

Commissioner DIAL. One other question: When you speak of 5 million acres, how many non-Indians reside on the 5 million acres at this time?

Mr. TAYLOR. I'm not sure. At one point the contention was made that some 350,000 non-Indian people were threatened by the Indian claims; however, the great bulk of the population of the non-Indian population in the State of Maine resides in coastal areas and the claims, as laid out by the motion of the Department of Justice, would not touch those coastal areas at this time.

They are keeping their options open so that if there is no forward motion at all, with the negotiating process, then the tribes can go ahead and claim all they feel they are entitled to.

As it is, the tribes are trying to send a very clear signal that they are willing to be reasonable about this and desire to negotiate a settlement.

Mr. HALL. Our understanding is that as a result of the amended claim, the overwhelming percentage of the 5 million acres is virgin timberland, virgin forest. It is not inhabited at all.

Commissioner DIAL. And owned by——

Mr. HALL. Owned by a handful of timber corporations.

Commissioner DIAL. But how many, four or five?

Mr. HALL. The figure I heard was six.

Commissioner BORBRIDGE. Mr. Chairman, in light of the absence of a quorum, is it possible to state something to the effect that the Commissioners agree that—and then to indicate the action that we wish to see followed with respect to these things?

Chairman ABOUREZK. Under the rules, we cannot conduct business without a quorum. Congressman Young said he would try to come back if we had to vote on something. He is sitting in with some Alaska constituents.

What specific motion did you have in mind, John?

Commissioner BORBRIDGE. I thought, Mr. Chairman, that the motion would indicate that the recommendation of the Commission would be that the appropriate committees of the House and the Senate to which H.R. 4169 and Senate bill 842 have been referred would refrain from holding hearings on the legislation pending the White House meeting. This is contained in the recommendations. No congressional action would occur until we had an opportunity to discuss this matter together, and that the Commission refrain from voting on the chapter pertaining to these claims, with the understanding that the chapter could be voted on at a subsequent meeting of this Commission. This would be the substance.

Commissioner **Dial.** Mr. Chairman?

Chairman **Abourezk.** Yes?

Commissioner **Dial.** We don't have to vote; we can just not vote.

Chairman **Abourezk.** Yes; we still have the option in the next meeting, or the final meeting, to include something on this as far as congressional committees holding hearings. I don't know about the House, but I'm not going to hold any hearings. I don't know if I ever will on that specific bill. If I ever do hold hearings, it is not just going to be on that bill.

So, what you desire to put in a motion is kind of already taken care of.

Commissioner **Borbridge.** Good, but its inclusion in the record will clearly demonstrate that if we had a quorum that it is very likely what we would have said.

Chairman **Abourezk.** Yes.

Mr. **Taylor.** Mr. Chairman, in the presentation this morning on tribal government, I indicated that there would be a section supplied this afternoon on the Major Crimes Act and the Assimilative Crimes Act. I have those with me now. I thought I would mention that before we conclude. We have reached the end of the scheduled agenda at this point.

Chairman **Abourezk.** All right. Is there any action required on those?

Mr. **Taylor.** No; we were recommending that appropriate oversight hearings be held and I believe we voted on that.

Chairman **Abourezk.** Then you just want to pass these out. All right.

Is there anything else to be brought before the Commission, if not, we are going to adjourn until early May, a specific date yet to be decided, probably May 9 or 10, somewhere in there, for final consideration of the report which is due to be furnished to the Congress May 18.

Commissioner **Dial.** Did we deal with the administrative matters that Max was going to take up? I see that is first on the agenda. Did we do that?

Mr. **Richtman.** Yes.

Commissioner **Dial.** You don't have any problems with that?

Mr. **Richtman.** No.

Commissioner **Whitecrow.** Mr. Chairman?

Chairman **Abourezk.** Jake?

Commissioner **Whitecrow.** I would like to recommend that at our final meeting—and I know this may be just a little bit out of order as far as a congressional commission is concerned with protocol and what have you—but inasmuch as we are concluding in May, a very historic moment, I would like to recommend that some form of a little get-together be arranged by our staff, so that we can all bring our wives, husbands, girl friends, boy friends, whatever it might be to a little——

Chairman Abourezk. You are referring to Ada's boy friend, I hope.

Commissioner Whitecrow. Yes. Anyway, I had planned to bring my wife to the next meeting. She is looking forward to it and I would like to see some form of a little reception as a going away gift for our involvement with the Commission.

Chairman Abourezk. I think it is a good idea. We are going to have to raise some money to do it. Let me direct the staff to raise some money privately.

Unless there is something official, we can dismiss the reporter and talk about this.

All right, the meeting is adjourned.

[Whereupon, at 3:25 p.m., the meeting adjourned.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

THURSDAY, MAY 12, 1977

AMERICAN INDIAN POLICY REVIEW COMMISSION,
Washington, D.C.

The Commission met, pursuant to notice, at 10 a.m., in room 1224, Dirksen Senate Office Building, Senator James Abourezk (chairman of the Commission) presiding.

Present: Senator James Abourezk, chairman; Commissioners Ada Deer; John Borbridge; Adolph L. Dial; Louis R. Bruce; Jake Whitecrow; and Congressmen Sidney R. Yates and Lloyd Meeds.

Staff present: Ernest L. Stevens, staff director; Ernestine Ducheneaux; Peter Taylor; Fred Martone; Max Richtman; and Alan Parker.

Chairman **ABOUREZK**. The American Indian Policy Review Commission meeting will come to order.

Ernie, would you call the roll?

Ms. **DUCHENEAUX**. Commissioner Borbridge.

Commissioner **BORBRIDGE**. Present.

Ms. **DUCHENEAUX**. Commissioner Deer.

Commissioner **DEER**. Here.

Ms. **DUCHEHEAUX**. Commissioner Dial.

Commissioner **DIAL**. Here.

Ms. **DUCHENEAUX**. Senator Hatfield.

Congressman Meeds.

Congressman **MEEDS**. Here.

Ms. **DUCHENEAUX**. Senator Metcalf.

Commissioner Whitecrow.

Commissioner **WHITECROW**. Here.

Ms. **DUCHENEAUX**. Congressman Yates.

Congressman Young.

And Chairman Abourezk.

Chairman **ABOUREZK**. Here.

Ms. **DUCHENEAUX**. We have a quorum.

Chairman **ABOUREZK**. All right. This is the final markup on the Commission report.

Alan, correct me if I am wrong, the law says we have to submit this report on May 18; is that right?

Mr. **PARKER**. That is correct.

Chairman **ABOUREZK**. And refer it to the Speaker of the House and the President Pro Tem of the Senate.

So how do you propose, Alan, to go through this final markup?

Mr. Parker. Mr. Chairman, the Commissioners received in late March a copy of the tentative final draft and a booklet, which was distributed this morning, identifies editorial revisions which the staff undertook in the interim.

The cover letter to this booklet from the staff director will explain that these revisions concentrated on grammatical improvements and changes in organization. Again, the emphasis in the revision was on improvement in the form and structure of the report.

A very careful attempt was made not to affect the substance of the narrative and the recommendations themselves which had been voted on by the Commission in prior sessions. In each case where it was felt that a change should be brought to the specific attention of the Commission, we have identified so in the booklet on the chapter-by-chapter basis.

I am not sure that the Commissioners have had an opportunity to examine this briefing material. If they have, then we could proceed on the chapter-by-chapter basis and respond to questions regarding changes which have been indicated.

Chairman **Abourezk.** Why don't we proceed on a chapter-by-chapter basis, however, just discussing the changes that you have noted.

Lloyd.

Congressman **Meeds.** Mr. Chairman, I appreciate the fact that the staff has been very busy, and certainly I don't want to impose any more burden than necessary on them, however, I think that approximately 14 days ago I made an inquiry of the staff with regard to changes which have been made in the text of the initial report which had been approved by the Commission and was told that we would be furnished a guide to changes which have been made.

Thereafter I was furnished the changed version but without any guide to where changes had been made. As the chairman and all of the members of this Commission know, we are all busy and it was very difficult, if not impossible, to try to compare the text of the initial version with the changed version and come up with the changes.

I inquired again, approximately 7 days ago, and was again told there would be such a paper made available to all of the Commissioners and to myself.

I must reiterate how important I thought this was. Finally, I think on Monday of this week, I received a letter from Peter Taylor indicating changes in a very general way—a two page letter telling me about all the changes that had been made.

I now find a paper called American Indian Policy Review Plans and Analysis of Editorial Changes and Substantive Revisions, which I have not had an opportunity to look at, but which looks a little more complete than the letter which still seems to me leaves something to be desired in terms of what I, at least, had envisioned the changes to be.

When we talk about minor editorial changes, I would like to know what those editorial changes are and what the rationale for them is. I think the members of this Commission are entitled to know what those changes are, and why they were made. This Commission has voted out a tentative draft and I think that we are entitled to know precisely how that draft has been changed, why it has been changed, and what the rationale for it is.

Now, if the staff is prepared to tell us, in all respects, the changes that have been made on a chapter-by-chapter basis, that is fine. I will sit here and listen to it, and I think that we all should.

If they are not, then I think we should recess until we are furnished a paper which contains all of those changes and the rationale for them. One or the other. I don't think that that is an unreasonable request.

Chairman **Abourezk**. You do have a paper indicating all the changes; right?

Mr. **Parker**. Yes, Mr. Chairman.

Chairman **Abourezk**. And it is before every Commissioner?

Mr. **Parker**. Right.

Chairman **Abourezk**. I might ask that you take up the changes as we go through chapter by chapter. So that pretty much satisfies your——

Mr. **Parker**. Mr. Chairman, the staff is prepared to explain——

Congressman **Meeds**. Just a minute, Mr. Chairman. I turned quickly to chapter 3. The title of this chapter has been changed and there have been minor editorial changes in this chapter. I want to know what those editorial changes are. I think this whole Commission wants to know, before there is any vote, what those minor editorial changes are and why they have been made.

Chairman **Abourezk**. Lloyd, no one disagrees with you. That is what we are going to do.

Congressman **Meeds**. Oh, I thought you were accepting this——

Chairman **Abourezk**. No, no, no. What I said was we are going to take it up chapter by chapter and have the staff discuss whatever changes there are for the benefit of the Commission.

Congressman **Meeds**. Fine. I think that that is a very good procedure, Mr. Chairman.

Commissioner **Borbridge**. Mr. Chairman.

Chairman **Abourezk**. John.

Commissioner **Borbridge**. As I perceive it, Mr. Chairman, all we are going to do at this time is review each of the changes which can only be, at this point, recommended changes if they vary from that which the Commission has recommended.

So, in the end, we have the final word on whether or not there shall be any changes.

Chairman **Abourezk**. We always do.

Commissioner **Borbridge**. Right.

Mr. **Taylor**. Mr. Chairman, I would like to further address the point that Mr. Meeds made. Chapter 3 is the chapter that I expect to present this morning. The minor editorial changes alluded to in point No. 3 are grammatical or punctuation changes. We do point out that there was some change in the discussion on jurisdiction. It was relatively minor.

I think where there has been any substantive variation, we are prepared to talk about it. In this particular chapter I would note that there are no recommendations at all.

Frankly, if we are going to go through it page by page, I have the marked up draft back on my office desk.

Chairman **Abourezk**. Pete, I think that everybody will be happy with the chapter-by-chapter analysis of the changes. Now, if there are no changes there is no use bringing something up again because we have voted on everything except those items which have been changed during the editing process.

Congressman **Meeds**. Mr. Chairman, if I may impose once more. I am not going to try to nitpick here. I don't think that you should have to explain every "i" that was undotted and which you dotted or every "t" which was uncrossed, which you have now crossed. I don't mean that at all.

What I mean is that where some change which would affect this report has been made or proposed, as Commissioner Borbridge correctly points out, then I think that we are entitled to know what that proposed change is and why it was made.

Mr. **Taylor**. I think that we are prepared to do that.

Chairman **Abourezk**. Do you want to start out with the first chapter? What about the introduction? Does anybody want to change that?

Commissioner **Deer**. I just have a question about the title. At this point it is "Captives Within a Free Society." I am wondering if there are other titles for the report. I am not aware of any. Maybe I missed them in my papers.

I am just wondering what other titles had been suggested.

Chairman **Abourezk**. That is the only one that I have heard. Perhaps the staff would like to comment on that.

Mr. **Taylor**. The title comes from the paper that was commissioned from D'Arcy McNickle. It is a title that he put on his paper when he submitted it and it seems like an appropriate title for the opening chapter which is a review of the Federal Indian relationship.

So we have simply retained that title as a chapter heading.

Chairman **Abourezk**. Do you have copies of the introduction here?

Mr. **Richtman**. No; we don't. Ernie is going to bring them shortly.

Congressman **Meeds**. Mr. Chairman, has it been written yet?

Chairman **Abourezk**. It has been written for a long time.

Congressman **Meeds**. I think it would be nice if we could refer to a copy of it.

Chairman **Abourezk**. Yes; I will be very happy to give you a copy as soon as Ernie brings it up.

Well, moving right along——

Mr. **Taylor**. The first chapter, which is an historical review of the Federal-Indian relationship has not been changed in any significant way whatever.

D'Arcy McNickle was here for approximately a week working with us on this chapter and on others. There were some very, very minor grammatical changes and footnotes were put in place. That is really the only change in chapter 1. It stands as it has since our last meeting.

Chapter 2, which is a review of the present conditions of Indians in modern day America, went through some substantial editorial changes and Max Richtman is going to talk about that chapter.

Mr. **Richtman**. Chapter 2 was titled within brackets of the tentative draft——

Commissioner **Deer**. Mr. Chairman, I have a question about the footnotes. Are the footnotes going to be on each page or are they going to be at the end of the chapters?

Mr. **Richtman**. The footnotes in the printed version will be at the bottom of each page; for purposes of this meeting it was easier to type footnotes at the end of each chapter to get the material to the Commissioners.

The chapter which was titled "Demographics" in our tentative report is titled "Contemporary Conditions" in this final version which you have before you. As Pete says, there were major editorial changes made in this chapter.

However, substantively there are no other changes whatsoever. The editorial changes involve taking a lot of the narrative material that was in this chapter and reducing it to charts which, if you look through the chapter after page 7, the material on Indian income, on education for men and women, unemployment statistics for men and women and housing sanitation—all of that material previously appeared in narrative form and what we did, for purposes of clarity and to maintain the reader's interest, was to take that material and put it into these charts.

The only other change that we made was a form in the tentative draft which appeared within that chapter. As we state at the bottom of the recommendation on page 13, this form which is used to report on facts relating to Indians, now appears as an appendix to the entire report.

Other than those changes, this chapter is intact and the same as it appeared in the tentative draft.

Commissioner **WHITECROW**. Mr. Chairman. Max, in regards to your comments here on the Indians in Connecticut——

Mr. **RICHTMAN**. Yes.

Commisioner **WHITECROW**. What page do we find that correction being made?

Mr. **RICHTMAN**. That reference was taken out of this draft entirely. In the tentative draft there was a reference to it. That was taken out entirely.

Congressman **MEEDS**. Why was that, if I may ask?

Mr. **RICHTMAN**. It is included in the general statement which does not list tribes at all. This listed some tribes which you did not have and officially recognized the relationship with the State of Connecticut and we decided not to list them—just make a general statement.

Congressman **MEEDS**. Mr. Chairman, in all instances when there are changes made, so I don't have to keep asking why, would the staff please indicate why they have done these things?

Mr. **RICHTMAN**. Yes.

Congressman **MEEDS**. Thank you.

Mr. **TAYLOR**. If there are no more questions on chapter 2, we can move into chapter 3. I might note that chapter 2 was moved forward to come immediately behind the historical section.

We felt that that would be a more appropriate place for it since we have just reviewed the history of the Federal-Indian relationship and the review of contemporary conditions, before we moved into the more substantive end, appeared to be appropriate.

Max has just raised a question of whether or not the Commission would care to vote, or feels like it should vote, on each chapter as it is presented. So far, chapters 1 and 2 are virtually the same as what had been presented at first.

Chairman **ABOUREZK**. I don't think we need to vote on each chapter as it is presented. If there is a change and the Commission does not agree with it, then we will vote on that change. Then we will once again vote on the entire report. But I don't think that there is a need to vote on each chapter as we go along.

Mr. **Taylor**. Chapter 3 is a general review of certain distinctive doctrines in American Indian law.

This chapter was prepared by Prof. Charles Wilkinson at the University of Oregon. It discusses seven major principles which are designated in the table of contents to this chapter.

It deals with the law lying behind sovereignty, trust relationships, the plenary power of Congress, the definition of Indian treaties, and jurisdiction. Until we hit the point on jurisdiction, the changes were strictly grammatical going through this chapter and an occasional footnote correction, but the discussion of the chapter remains exactly as it was at our prior meeting.

In jurisdiction we made some very minor revisions. On pages 3–20 through 3–24: Mr. Meeds, at the time that I wrote the letter to you—which you received Monday and which I actually delivered at 4 o'clock on Saturday—I thought that we had revised this slightly more than we, in fact, did.

The changes are very minor. The general thrust of what Mr. Wilkinson had layed out before remains precisely as it was. This section on jurisdiction is entitled as a very general discussion as to what jurisdiction is. There was an attempt to write it in a form for laymen which is an important thing.

We jump back and forth between some rather sophisticated legal arguments in this report and occasionally, in certain parts, we are trying to write for laymen. I think that this concerned me a little bit.

Any area where a substantive issue is at stake, is really being dealt with in the more substantive chapters that come farther back, namely, tribal government.

So the changes in this chapter have been very, very minor. The general thrust of it remains exactly as it was in our last meeting.

Congressman **Meeds**. Mr. Martone, have you had an opportunity to read 3–20 through 3–24?

Mr. **Martone**. Just briefly, Mr. Meeds. It does seem to be a layman's broad view of civil versus criminal jurisdiction.

Congressman **Meeds**. Do you see any substantive change from the thrust of the chapter on at least the question of jurisdiction?

Mr. **Martone**. Nothing that would change any of the basic doctrines which underly. There is one comment in chapter 3 that I would like to bring to the attention of the Commission. I am not certain that it was in the tentative draft in that manner.

It appears at page 3–14—it is the first paragraph on that page. That paragraph suggests that the fact that Congress has plenary power over Indian affairs is somehow not premised on notions of natural right and justice, but simply because the United States is more powerful than tribes.

I wonder if the Commission wants to take that position or does it want to state that that is the opinion of some people in Indian country?

Congressman **Meeds**. Mr. Chairman, the first thing that I would ask is: Was this in the original proposal? I read all of chapter 3 of the original proposal and I do not recall having seen this.

Mr. **Taylor**. Mr. Meeds, if we could take a second, let me try to find it. I think that it was, but I am not sure.

Mr. **Martone.** I think that the analogous paragraph in the tentative draft would appear at page 2-17, the last paragraph. That is a different notion than the paragraph that appears on page 3-14 of the latest draft because it leads to the paragraph on page 2-17 of the former draft.

It is suggested that that was the belief of many Indian people, whereas the latest draft suggests that that is the belief of this Commission.

Congressman **Meeds.** I recall having seen that somewhere, but I don't know where it was.

Mr. **Martone.** It is on page 2-17 of the tentative final report.

Mr. **Taylor.** It appears that the two paragraphs were essentially dealing with the same subject but the words have been revised in this new edition.

My personal reaction is: I find our earlier version more comprehensible. I would recommend that we substitute our earlier paragraph for this one.

Congressman **Meeds.** Mr. Chairman, now this is precisely what I am talking about and precisely what I was concerned about. That has been turned from a statement that many Indians believe this to be the situation, with which I agree and many of them do believe that to be, to the statement of the Commission.

I, personally, as a Commissioner, do not want to be bound by that statement.

Congressman **Yates.** What statement are you talking about?

Congressman **Meeds.** The statement at 3-14, the first paragraph, which states rather clearly that this Commission feels that the power of Congress is not premised on notions of natural right and justice but rather on the pragmatic doctrine that the United States is more powerful than tribes.

Chairman **Abourezk.** Do you disagree with that?

Congressman **Meeds.** Yes; I disagree with that.

Congressman **Yates.** Why do you need it? Why is that paragraph necessary?

Chairman **Abourezk.** I have no idea. I didn't put the paragraph in.

Congressman **Yates** Maybe staff can tell us.

Mr. **Taylor.** Mr. Yates, I think the paragraph is in there to make clear the feeling that Indian people have toward the plenary power that Congress exercises over them. The fact that in their opinion when Congress takes such actions as terminating Federal relationships and perhaps enacting legislation that encroaches upon certain rights that they have—for example, building dams that flood reservations—that actions such as that are not taken as a matter of natural right.

Congressman **Yates.** But don't you take care of that in another paragraph in another part of the report where you require that before any such action be taken in the future that the approval of Congress be obtained?

Mr. **Taylor.** Yes, we do in chapter 4.

Congressman **Yates.** If that be true, then why do you need this paragraph?

Chairman **Abourezk.** May I just respond to that, Sid? You can probably take a lot of paragraphs out of here and say that you don't need them, but as just a collection of words, I think it is good to have it in there. It is not untrue. It is not bad to have it in there.

I don't think there is any big deal whether it is in there or not.

Congressman YATES. If I understand the thrust of this paragraph, it is that this is a current attitude. I would be inclined to think that this reflects what was more true in the past than at present.

Chairman ABOUREZK. For example, the example that Pete Taylor talked about—the Fort McDowell Reservation in Arizona as part of the central Arizona project—what is the percentage of the Fort McDowell Reservation that is going to be wiped out by the central Arizona project?

Mr. TAYLOR. I think that Alan probably has a better idea.

Mr. PARKER The majority of the reservation.

Chairman ABOUREZK. At one point I knew the figure. It is like 75 percent or 80 percent of the reservation that is being condemned by the Bureau of Reclamation and taken. It is just absolutely taken. I don't know how you could argue with that.

They are doing it because they are more powerful than the Fort McDowell Indians are.

Congressman YATES. But you could make the same argument with respect to white people with other dams.

Chairman ABOUREZK. That is true.

Congressman YATES. I wonder whether or not this is, in effect, considered to be a discrimination against the Indian people any more than it is discrimination against white people whose land is taken for dams. Now, that is why I don't think that the example that you cite is a fortuitous one.

My own feeling is that: Yes, the thought of this paragraph was certainly true in the past. I would like to believe that it is not true in the present. Am I wrong in that?

Mr. TAYLOR. I would like to address myself to the point that you are raising about whether the Indians' situation vis-a-vis the Federal Government is the same as any other persons' land that is condemned. In the situation where the Indian land is condemned they virtually lose their home base.

The reservations were set aside by treaty or statute, et cetera, as the home land of those people. Their governmental powers derive from that, their livelihood, many rights—tax rights, hunting and fishing rights—their whole existence as independent, separate people is dependent on those reservations. If the reservation is condemned, you have taken more than their land. You have taken their entire life.

Congressman YATES. Was this the subject of a court action?

Mr. TAYLOR. Fort McDowell, I believe, is a matter that is tied up in the Presidential study of the feasibility of water projects.

Chairman ABOUREZK. I believe the original taking was congressional. But I have to be honest with you; I don't know whether it was tied up in court.

Mr. TAYLOR. Senator, it hasn't been taken yet.

Mr. MARTONE. It is really premature. It is the central Arizona project.

Congressman YATES. Isn't it possible the lands won't be taken?

Mr. MARTONE. It is very likely they won't be taken because, as I understand the President's compromise proposal, it means that the lands won't be taken, since they have deleted the Army dam portion of the central Arizona project.

Congressman **Yates.** Then this is not an example we should turn to.

Mr. **Martone.** I quite agree. I think the whole notion of taking land goes to the point that appears in the paragraph at 3-14. That paragraph goes to the existence of power rather than its exercise. It seems to me that what we are talking about here, at least we have for the last 5 minutes, is perhaps inappropriate exercise of that power. This paragraph suggests that the very existence of the power is not based on notions of natural right and justice. It is quite a different concept from the concept that appeared in the tentative draft in chapter 2 which said that was the opinion of some Indian people. Frankly, there is, to me at least, in that paragraph, seeds of latent hostility and a suggestion that the power of the Congress is somehow legitimate.

Congressman **Yates.** I tend to that view, too.

Mr. **Martone.** Does this Commission want to go on record in that way.

Commissioner **Dial.** Mr. Chairman, I suggest a compromise on this paragraph. It seems to me that if the first line would read: "Many Indian people believe Congress has broad power", and delete the next few words, it is not a premise. This would take care of it.

Congressman **Yates.** How would that read?

Commissioner **Dial.** "Many Indian people believe Congress broad power is not premised on notions of natural rights and justice." Then no one could deny this. When you say "many people believe"—this doesn't say that the Commission supports it 100 percent.

Commissioner **Borbridge.** Mr. Chairman, may I ask a question of Commissioner Dial?

Chairman **Abourezk.** Yes.

Commissioner **Borbridge.** Commissioner, I believe that might be unduly restrictive, and I would suggest to the Commissioner in a motion that we have Indians and many non-Indians. In fact, this is not just the view of Indians.

Commissioner **Dial.** Very good.

Congressman **Yates.** You could say "many people."

Commissioner **Dial** Right, many people.

Commissioner **Borbridge.** Mr. Chairman——

Chairman **Abourezk.** Let's act on this first, unless you are going to talk on that. Do you have specific language now?

Commissioner **Dial.** Yes; I think so.

Chairman **Abourezk.** Restate it, please.

Commissioner **Dial.** "Many people believe Congress broad power is not premised on notions of natural right and justice."

Chairman **Abourezk.** Are you leaving in or taking out "to which many people object"?

Commissioner **Dial.** It wouldn't sound right. You would have to delete those words.

Chairman **Abourezk.** All right. Does everybody understand the amendment?

Congressman **Yates.** I don't understand why that sentence is necessary.

Commissioner **Dial.** I have no objections to paragraph 3-14 as it is, but Congressman Meeds had some objection, so I was just trying to get something that all of us could work with.

Congressman **Yates.** I instinctively pull back from that paragraph because of what I believe to be the inherent force of it, and that is it is kind of an abuse of power by the Congress. I think that is implicit in it, and I don't think that Congress is abusing the power.

You talk about the Fort McDowell situation. Is Congress abusing the power to the Indian people today?

Mr. **Taylor.** When it condemns a reservation without providing new land, without providing a new reservation base——

Congressman **Yates.** Is Congress doing that?

Mr. **Taylor.** Yes.

Congressman **Yates.** Where is it doing that?

Mr. **Taylor.** It is referenced at Fort McDowell. The fact occurred at Seneca in New York where five/sixth of the reservation has been taken.

Congressman **Yates.** For a dam?

Mr. **Taylor.** Yes; and the Corps of Engineers is not satisfied with that.

Congressman **Yates.** Over the objection of the Indian people?

Mr. **Taylor.** Absolutely.

Chairman **Abourezk.** How long ago?

Mr. **Taylor.** I think within the past decade.

Congressman **Meeds.** Thirteen years ago; right?

Mr. **Taylor.** Was it? However, the Corps of Engineers is not satisfied with that. Now they want the remainder to build a road around the dam so non-Indians can go water skiing.

Congressman **Meeds.** Have we not agreed in a later chapter that whenever condemnation becomes necessary that the alternative of providing land be provided?

Mr. **Taylor.** Yes; we deal with that in chapter 4.

Congressman **Yates.** Why don't we insert this language at that point then?

Congressman **Meed.** Well, I object to the language. I totally object.

Chairman **Abourezk.** May I say something now?

Congressman **Yates.** Why sure.

Chairman **Abourezk.** I don't think there is anything wrong with this language. I think it is true. I don't think legally or jurisprudentially or any other way is it untrue. I think it lays a good, factual foundation for what we say later on about the necessity for some kind of an Indian trust rights impact statement. I think that is why it is necessary to be in there. As a matter of laying the foundation.

Mr. **Taylor.** It comes at the end of two pages of discussion explaining the powers that the Federal Government has.

Chairman **Abourezk.** The more I think about it, the more I would be opposed to removing this. It just seems to me it is a necessary part of the report.

Commissioner **Borbridge.** Mr. Chairman?

Chairman **Abourezk.** John?

Commissioner **Borbridge.** With respect to this language I think conceptually we may be having some difficulties because there is no question in my mind that historically this language is accurate. When one examines some of the current circumstances it is still accurate. I don't believe that it will be either accurate or nearly as applicable once the recommendations of the Commission have been submitted and in large part implemented, hopefully, into legislation.

If the language jars us conceptually as a very basic belief in the feeling of the Indian nations, then I suggest that is why we are here—to proceed unembroidered and undiluted. Looking at these concepts, these feelings however they may jar us are necessary for us to proceed—to perceive and to understand even if they do jar us in the process so we can move constructively toward the kind of policy I feel this Commission is moving toward.

Congressman **Yates.** I think rather than accepting Adolph's amendment what I would propose is just to strike the amendment that Indian people object, Congress power is not premised on notions of natural rights and justice.

Chairman **Abourezk.** I would accept that. That is a good compromise.

Congressman **Meeds.** What is that?

Congressman **Yates.** Just strike out the words "many Indian people object." Say that "Congress broad power is not premised on notions of natural rights and justice." But I don't know what that means. What do you mean by that?

Congressman **Meeds.** That is kind of an illegitimate operation. That is what it means.

Mr. Chairman, first let me say that I think——

Congressman **Yates.** There is something that is not right about that sentence.

Congressman **Meeds.** First let me say I think that Commissioner Dial's proposed amendment makes the paragraph a factual paragraph. I do not think it is factual now. As Mr. Yates points out, this may well have been at one time. What is justice? If you say absolute justice, I guess maybe anything can be true against that measurement. But justice as we know it in the world today—I think Congress power is premised as much on justice as any legislative body in the world.

Congressman **Yates.** Would you yield for a moment?

I think the sentence violates the premises of the Constitution and the Preamble. Does it really?

Chairman **Abourezk.** Well, so does some of the congressional actions violate——

Congressman **Yates.** But in those cases the courts overturn them.

Chairman **Abourezk.** But they don't in most cases. I think we are spending too much time in this one area. I don't think you can argue with the fact that it is not through the malfeasance of Congress but the omissions of Congress in letting the Bureau of Indian Affairs run the Indians' lives. And what they do is based upon the greater power of the U.S. Government over the Indian people as well as the white people.

Congressman **Yates.** Will you yield for a moment?

Is this what you are trying to say, the exercise of Congress broad power has not always resulted in natural rights and justice? Is that what you are trying to say?

Chairman **Abourezk.** No; what I think they are saying is that it is not premised on natural rights. My view of the Government based——

Congressman **Yates.** What you are doing, though, every example here, as given, has been of a case where congressional action has not fulfilled natural rights and justice.

Chairman Abourezk. Let's say that my view of the term "natural rights and justice" means that it is government through the consent of the governed. Now while that may be true in many cases with the non-Indian community, and it is not true in all cases, we are governed with their consent, and it is certainly not true of the Indian people by and large. The Government has not really gotten their consent for the actions taken against Indian people. Rarely have they ever gotten their consent.

Congressman Yates. What you are saying then is the exercise of power has been done without considering natural rights and justice on many occasions.

Chairman Abourezk. The exercise of the power of Indian governments——

Congressman Yates. I think we should not use the word "premise."

Chairman Abourezk. The exercise of power of any government is based on the relative strength of the government vis-a-vis the people who are governed. That is why a government has an army and a police force, and that is why they have courts.

Congressman Yates. Then why put this language in? Yours is more appropriate. What you are really objecting to, it seems to me, is the horrible examples that have occurred by congressional action. They have been without regard to what is natural rights and justice. What this says isn't that. It is not saying that. What you want to say, I think, is that the use by Congress of its broad power against the Indian people on many occasions has been a flaunting of natural rights and justices. That is what you want to say, isn't it?

Chairman Abourezk. To me this says it here.

Commissioner Dial. Why couldn't you say that then, Mr. Chairman? Why couldn't you say Congress broad power—what was the statement you used?

Congressman Yates. The exercise of Congress broad power against the Indian people has resulted on many occasions, or on too many occasions, in the flaunting of natural rights and justices.

Commissioner Dial. I think the point we need to get in, Mr. Chairman, is that Congress over the years, and also today, constantly is tramping on Indian people.

Congressman Yates. That, of course, includes today as well if you want to include—what you are saying is that sometimes Congress acts contrary to natural rights and justices against Indian people. Isn't that what you are trying to say? And that isn't what that sentence says.

Mr. Martone. Mr. Yates, may I answer the question, I don't think that is what they are trying to say. If you read the pages just prior to that, they are talking about the existence of the plenary power of Congress under article I, section 8 of the Constitution as being not based on notions of natural rights and justice, not its arbitrary exercise. If you were to change that paragraph to talk about how abuses have occurred, or how its exercise may have been misdirected, then it wouldn't follow from this discussion about the scope of the plenary power.

My comment was if this paragraph is to stay in it should be clear that it goes to the existence of that constitutional power of the Congress, and is this a statement of this Commission or is it a statement of some Indian and some non-Indian people?

Chairman **Abourezk.** We can determine whether it is a statement of the Commission by taking a vote of the Commission. That is how you determine that.

Congressman **Meeds.** Mr. Chairman, I move to strike the paragraph.

Chairman **Abourezk.** All right.

Congressman **Meeds.** I move to strike it.

Chairman **Abourezk.** Adolph has to withdraw his amendment first.

Commissioner **Dial.** Did I make a motion earlier?

Chairman **Abourezk.** Yes. You can either withdraw it or we will do it as a substitute; however you want to do it.

Commissioner **Dial.** I am not entirely for deleting the paragraph.

Chairman **Abourezk.** Why don't you withdraw your amendment, and we will deal with Lloyd's?

Congressman **Meeds.** Mr. Chairman, I have an amendment to substitute——

Commissioner **Dial.** I withdraw my amendment.

Chairman **Abourezk.** All right. The amendment by Congressman Meeds is to delete the top paragraph on page 3–14.

The clerk will call the roll.

Congressman **Yates.** Is it in order to offer a substitute for Mr. Meed's motion?

Chairman **Abourezk.** No; not to the motion to strike.

The clerk will call the roll.

Ms. **Ducheneaux.** Commissioner Borbridge?

Commissioner **Borbridge.** No.

Ms. **Ducheneaux.** Commissioner Bruce?

Commissioner **Bruce.** No.

Ms. **Ducheneaux.** Commissioner Deer?

Commissioner **Deer.** No.

Ms. **Ducheneaux.** Commissioner Dial?

Commissioner **Dial.** No.

Ms. **Ducheneaux.** Congressman Meeds?

Congressman **Meeds.** Aye.

Ms. **Ducheneaux.** Commissioner Whitecrow?

Commissioner **Whitecrow.** No.

Ms. **Ducheneaux.** Congressman Yates?

Congressman **Yates.** No.

Ms. **Ducheneaux.** Chairman Abourezk?

Chairman **Abourezk.** No.

Ms. **Ducheneaux.** 7 to 1.

Chairman **Abourezk.** OK. Do you want to offer something?

Congressman **Yates.** Yes. I would like to amend the first paragraph, the first sentence of that paragraph to read "the exercise of Congress' broad power against many Indian tribes has frequently resulted in the flaunting of natural rights and justice."

Commissioner **Dial.** I will go along with that, Mr. Chairman.

Ms. **Ducheneaux.** Excuse me. I didn't get the last part.

Congressman **Yates.** Has resulted in the flaunting of natural rights and justice.

Chairman **Abourezk.** I apologize. Would you tell me how that is supposed to read?

Congressman **Yates**. The exercise of Congress' broad power against the Indian people or against many Indian tribes has frequently resulted in the flaunting of natural rights and justice.

Commissioner **Bruce**. Why not the individual.

Chairman **Abourezk**. Then leave the sentence in or take it out.

Congressman **Yates**. I would take it out, really. Because I think that that follows from the previous unamended sentence. I don't know that it contributes anything.

Chairman **Abourezk**. I would just like to speak briefly in opposition to that amendment because I think it changes the whole tone of that paragraph. I think I know what Sid is trying to get at, but I think it changes the whole form of the paragraph.

Congressman **Yates**. The whole tone of the paragraph is against what I thought was Jefferson's concept of what the rights of government were and the Constitution. You talk about natural rights and justice. The exercise of those powers as being an exercise of the natural rights of man and of justice. This says that Congress' broad power isn't that. I don't see anything to be gained by it. What we are trying to do is say that Congress congressional action, as I understand what we are trying to say, I don't know that we are engaged in drafting a constitutional treatise here, which I think is what this is moving toward.

I think what we are trying to do is to say that the exercise by Congress of its power in the past against the Indian people has not been in accord with what Jefferson originally intended Congress action to be, or what Lee wanted Congress action to be. That, I think, is what the intent of this paragraph or the whole report to be. I don't want to talk about constitutional power and have a big argument by constitutional scholars as to what is meant by whether Congress broad power has been premised on notions, or has or has not been premised on notions of natural rights and justice.

You are getting into a constitutional argument there.

I go along with the idea. I expressed my philosophy, that what Congress has done in the past in accordance with the examples given by staff—what it has done recently is against the Indian people and flouts their rights. That is what I think I want to say. I don't think the way that paragraph says it now says what I want to say.

Chairman **Abourezk**. One of the Georgia cases, the Cherokees, said the power the Government has is based on the right of Congress. I think this is an absolutely true statement. In fact, if you ask the Indian people at any time in the last 200 years, including today, do they want the Government telling them to do the things that they are telling them to do or not to do, then they would say, no, of course not. Then it seems to me that the reason the Government is telling the Indians is because they are more powerful. In fact, if I recall the courses I took in jurisprudence in law school—I went to law school more recently than you did.

Congressman **Yates**. By many years, I might say.

Chairman **Abourezk**. By many years. I started late in life.

Congressman **Yates**. I was a child prodigy.

Chairman **Abourezk**. It seems to me that the right of any government with respect to governing is based on this power and rarely in the

United States have we had any semblance of rules based on natural rights and justice—which is that we attempt to ask the people being governed for their consent in that government.

Now that may be true for some segments of the non-Indian community. It is hardly ever true for the Indian community. I don't want to repeat what I said a few minutes ago, but that is the basis of it. It seems to me this says it very accurately.

Congressman YATES. Somewhere along the line I have trouble separating the Indian community from the rest of the community. I think maybe that is what the difference is. I am trying to say that the Indian community is a part of our Government. You are trying to separate it out. Am I right in that?

Chairman ABOUREZK. I guess you are partly right, and not too wrong. You are partly right.

Congressman YATES. Why do you need that concept?

Chairman ABOUREZK. It seems to me it is a basis. It lays a foundation for convincing the Government that it ought to get a little more consent from the Indian people.

Congressman YATES. That is the reason I offered my amendment saying that what you have done in the past has been totally wrong. Let's change it. But you are not saying that in that paragraph. What I am saying is that the Congress has flaunted the rights of the Indian people in the past. You can follow that by saying we don't want to do it again. That is why we make these recommendations.

But I don't know why you would have to say it is not premised on notions of natural right and justice. I like to think that it is, as a Member of Congress. At least I try to exercise my voice as a Member of Congress in accordance with what I conceive to be natural right and justice.

Chairman ABOUREZK. I think that is true.

Congressman YATES. What you are saying there, it is not based on that.

Chairman ABOUREZK. We are not talking about your singular actions.

Congressman YATES. You are talking about Congress and I am a part of Congress, and so are you this term.

Chairman ABOUREZK. If you keep that up, I will run again.

Congressman YATES. I will keep it up then.

Chairman ABOUREZK. Let me try to work out a compromise if I can. I don't know how the balance of the Commissioners feel, but I feel it would be wiping out a good foundation if you wipe out this paragraph?

Congressman YATES. Why? The foundation for what?

Chairman ABOUREZK. For saying that the U.S. Government ought to try to govern on something more than the basis that they are just more powerful than Indians and they can push them around. You wouldn't say, for example, the U.S. Government——

Congressman YATES. Why don't you say that?

Chairman ABOUREZK. You wouldn't see the U.S. Government condemning Mobil Oil's property.

Congressman YATES. Well, you might.

Chairman ABOUREZK. I don't think so.

Congresman YATES. Depending on where it was.

Chairman ABOUREZK. I think Mobil Oil would invade the United States if you tried that.

Congressman **Yates**. That might be. Jim, I would suggest what you just said, I don't think this paragraph says it. I would be willing to accept the foundation that says that. I think my sentence goes along with what you are saying more than the paragraph says.

Chairman **Abourezk**. How about "Congress broad power, in the view of many people, is not premised on notions of natural rights and justice." No. "Congress broad power with respect to the Indian people, in the view of many people, is not premised on notions of natural right and justice. While their plenary power is a pragmatic doctrine" and so on and so on. Does that say it better?

Congressman **Yates**. Not to me. Can we pass this and come back to it.

Chairman **Abourezk**. Yes.

Congressman **Yates**. Why don't we do that and see if we can work out some language later.

Chairman **Abourezk**. OK.

Congressman **Yates**. I think I want to say what you want to say and I am not sure that what I want to say is what the staff wants to say. What I want to say is that the rights of the Indian peoples in the past have been abused. That they have been abused without regard to what the natural rights and justice were. We ought not to permit that to be done again.

Chairman **Abourezk**. I like that. Pete, who is presenting the next chapter?

Mr. **Taylor**. We are debating that right now. Alan and I will probably discuss it.

Chairman **Abourezk**. Whoever isn't presenting it, would you write out what we have been discussing and get it into some kind of tight language. I think we do agree on principle. I think this states it and Sid thinks it doesn't.

Congressman **Yates**. I don't think that language says that.

Chairman **Abourezk**. See if you can work out something that will say what we are trying to say.

Mr. **Taylor**. I think at our first break we can do that.

Chairman **Abourezk**. Well, let's go on to the next chapter.

Mr. **Taylor**. This concludes chapter 3. The only other area that we had singled out Mr. Martone has already addressed himself to in response to Mr. Meeds. I gather that Fred detects no substantive change.

Chairman **Abourezk**. You and Lloyd have talked this over, obviously, Fred. Lloyd is gone. If you see anything you want to change, we will note that. I don't think we ought to vote on anything until Lloyd gets back. We will just note it and come back to it if you think Lloyd has objections to it; OK?

Mr. **Martone**. I think it would be clear that he would have objections to the whole chapter, for the reasons stated in his dissent.

Chairman **Abourezk**. We are talking about the changes, themselves, right now.

Mr. **Martone**. OK.

Commissioner **Dial**. Mr. Chairman?

Chairman **Abourezk**. Yes.

Commissioner **Dial**. If an individual objects to the whole chapter, then it is useless to waste time discussing any points of objection by paragraph that he objects to.

Congressman **Yates.** No; with due respect, Adolph, I don't object to the whole chapter but I do object to that paragraph.

Commissioner **Dial.** I am not speaking of this paragraph.

Congressman **Yates.** Oh, I beg your pardon.

Commissioner **Dial.** Mr. Chairman, I am only saying that we shouldn't kill time with a paragraph, discussing it with an individual if he is objecting to the whole chapter, then that is time consuming.

Chairman **Abourezk.** That is right. Unless someone else on the Commission might object to a paragraph. That is right. OK; go ahead.

Mr. **Taylor.** Staff has also reached a consensus that the next chapter—chapter 4—will be presented by Alan Parker.

Mr. **Richtman.** Before Alan starts that chapter, in the analysis of chapter 4, the first paragraph, which is general, discusses the summary of findings and recommendations which appear in that chapter in the tentative report are no longer there. What we have done is extracted that material and put it into another document which each of you should have. There is a clip on it. This document is a summary of all the recommendations of all of the chapters numbered consecutively. This will appear prior to chapter 1 of the printed report. We felt it was unnecessary to repeat that material in each chapter. So, just being concise, we had it pulled all together and it will appear before we get into the substance of chapter 1 in the printed report.

Mr. **Parker.** If you will glance at the table of contents for chapter 4—Trust Responsibility, you will note that 12 sections have been identified. The intent there was to insert headings. Again, no changes to the text. Headings which would be more instructive and a reader could glance at that table of contents and by looking at the progression of headings understand the concepts.

In your booklet, which was passed out, the second paragraph in the insertion of explanatory headings demonstrate exactly what we are talking about. The heading, "Wardship versus Trusteeship," and "Conflict of Interest," and so on.

The material we wish to draw your attention to is again mentioned at the bottom of that page in your booklet entitled "New Tests." You will note on page 4–8 the heading for the section which is entitled "Scope of Trust Obligation," two-thirds of the way down the page. If the Chair wishes, I could read through that, or, I could simply ask if the members had a chance to read it.

Chairman **Abourezk.** Would anybody on the Commission like him to read it through, or are you satisfied with it?

Congressman **Yates.** Where do you begin?

Mr. **Parker.** Beginning on page 4–8, the paragraph two-thirds of the way down the page beginning "The Commission has found——"

Congressman **Yates.** The Commission has found?

Mr. **Parker.** Yes.

Chairman **Abourezk.** What are the changes? Just tell us what the changes are without reading it through.

Mr. **Parker.** This is a change in the narrative intended to clarify the recommendation. The narrative changes here draws out a distinction between application of the trust responsibility to tangible physical assets and application to intangible responsibilities, provisions of services, et cetera.

We drew this distinction between those two categories of the trust, intangible versus tangible, in order to point out the difference in application of the trust. It was evident from the prior hearings and the prior discussion by the Commission on this specific point that clarification needed to be made.

Pete was just pointing out to me that this narrative, which draws this distinction, again relates to the recommendation which was found on page 4–20. It may be helpful for me to read this recommendation and then go back to the narrative. On page 4–20 there is a general paragraph entitled "Statement of Policy" about two-thirds of the way down. The paragraph reads:

> In matters involving trust resources, the United States shall be held to the highest standards of care and good faith consistent with principles of common law trusts. Legal and equitable remedies shall be available in Federal court for breach of standards.

This additional narrative is in response to comments which were submitted to the Commission in the interim since the release of the tentative draft. Substantive comments criticized the lack of clarity in the tentative draft on this specific point. So again, in response to that lack of clarity, let me say specifically the difference in application, and this again was in response to the comments we received, if you apply the concept of common law principles of trust, which means standards of care, legal and equitable remedies for each of these standards of care, those remedies are not readily applicable to the trust as it applies to the intangibles. So without conceding that the United States has a trust responsibility which goes to intangibles, we draw a distinction in the application of that trust. The application to tangibles, physical assets, which was discussed in prior Commission meetings, and the application of the trust as opposed to intangibles and say the common law principles and remedies which are found in common law breach of trust are readily applicable to the trust as it applies to physical resources and tangible assets but not readily applicable as it applies to the concept of the trust as it applies to obligation to provide services, a general obligation to recognize and protect the right of self-government. That is an intangible.

Congressman Yates. How far do you carry that principle? Does the principle extend to urban health care facilities?

Mr. Taylor. We think it does.

Congressman Yates. How does this respond to the trust responsibilities flowing through the tribe?

Mr. Parker. The concept of the trust flowing through the tribe to individuals in staff's opinion is not affected at all by drawing this distinction.

Congressman Yates. Must the Indian people who live in urban communities and who seek health services at urban Indian clinics still maintain their membership in the tribe?

Mr. Parker. Correct.

Congressman Yates. If they do not retain their membership in the tribes; does the trust responsibility of the United States cease to exist to them?

Mr. Parker. I think we are talking about a purely hypothetical situation. People who lose their membership in the tribe—I personally know of no individual Indians who lose their membership in the tribe by residing off the reservations. Now maybe others are aware of it, but as a matter of fact, and the circumstances that we are talking about, I know of no tribe that requires that an individual waive or give up his membership rights simply because he is absent from the reservation.

Congressman **Yates**. Perhaps I spoke from my lack of knowledge. What you are saying then is that once an Indian child is born into a tribe he remains a member of that tribe forever unless that tribe excludes him, and this is true no matter where he goes throughout the world?

Mr. **Parker**. Exactly. I know of no examples where tribes have excluded people. The power is there.

Congressman **Yates**. And there is no requirement upon the individual Indian to constantly touch base with the tribe. As for example, the requirement that American citizens who live abroad must come back every 2 or 3 years to renew their citizenship.

Mr. **Parker**. Not to my knowledge. There are cultural requirements which are beyond the purview of us. For instance, the Pueblos regard it as a cultural obligation for individuals to pay their dues in a cultural sense—in a religious sense.

Congressman **Yates**. What happens if they don't?

Mr. **Parker**. I think it is more of a form of ostracism. There is no legal separation of membership.

Congressman **Yates**. Thank you.

Commissioner **Bruce**. Alan, aren't there some tribes that require that a child born of members of the tribe off the reservation—has no right to be enrolled? Say to people who are living in urban communities away from the reservation?

Mr. **Parker**. Not that I know of. One example in my own tribe, the Rocky Boy Chippewa-Cree, if you were born on the reservation, or in a reservation that services that population, and one of your parents is a member of the tribe, you are automatically a member of the tribe. The same thing applies to Pine Ridge. If one of your parents is a member, and you are born there, you are automatically a member. If you are born off, there is a higher standard which brings in another standard. I think Pine Ridge is one-fourth degree Oglala Sioux if you are born off. If you are born on, there is no standard.

Now that is the same with my reservation. There are probably a number of other reservations like that. So just the fact that you are having to reside off and your child off to my knowledge does not automatically exclude one under any tribe that I know of.

Congressman **Yates**. Is there a difference between membership and enrollment?

Mr. **Parker**. Yes; there is a difference. It goes to some technical considerations about Indian preference, but you can be a member with out being enrolled. For example, if you can establish that you are one-fourth degree a member of a federally recognized tribe, you are eligible for a variety of Federal services even though you may not be enrolled. This is becoming more common for intermarriage between tribes. I know, from my personal knowledge, of many individuals who have a blood quantum higher than one-half degree Indian blood but not one-fourth of any one particular tribe that they can trace back to their descendants such that they could meet the enrollment standard for that tribe. So these individuals meet the blood quantum standard and are eligible for Federal services. They are members of the tribe but they are not technically eligible for enrollment.

Congressman **Yates**. What is the lowest blood quantum which would permit an individual to be designated a member of the tribe? Does it vary from tribe to tribe?

Mr. **Parker**. It definitely varies widely.

Congressman **Yates**. What is the minimum that you know of?

Mr. **Parker**. I hesitate——

Commissioner **Bruce**. One-thirty second.

Congressman **Yates**. Do you know which tribe?

Commissioner **Bruce**. Oklahoma, I think.

Mr. **Parker**. I don't speak from hard knowledge on that. If anybody wants to volunteer hard information. My impression is that one thirty-second sounds more like an educated guess on the part of Commissioner Bruce.

Commissioner **Whitecrow**. I might shed a little light on this particular subject. I may be incorrect on this, but as I recall, the Yakima tribe if you are a descendant of a fullblooded member, both male and female, both your parents are fullblooded members of the Yakima tribe and you are born off the reservation, I understand you have to go through adoption ceremonies in order to become a member of the tribe. So that would tend to indicate some corrections in this discussion.

Also, in Oklahoma we do have some tribes that recognize open ended descendants in the recent payment schedules for some claims won through the U.S. Court of Claims. I know of one tribe, the Quapaw tribe, who paid down to those descendants one five-hundred-and-twelfth-degree blood.

So, for this particular instance those individuals are totally eligible for all services that the tribe is eligible for. Therefore, Mr. Yates, I believe that your question with regard to whether or not an individual would be excluded—is that individual still eligible as a beneficiary of the trust—I think this report, as I understand the concept of it and as it has been written and presented to me, if you retain your tribal membership, then you are eligible and function as a beneficiary of the tribe irregardless of where you may live.

Mr. **Parker**. Commissioner Whitecrow just reminded me of an additional consideration. One which Commissioner Yates had raised prior to our discussion. This was certainly brought out in the Senate report. That is the potential liability of the United States for breach of trust as it applies to intangible assets. That is where I think this distinction is helpful.

Some of the criticism of the remarks in the draft pointed out that, as developed in the narrative, one could speculate that the United States would have unrestricted liability for failure to provide social services. The specific point that we tried to make here was that the principles upon which the United States could potentially be held legally liable for breach of trust are readily applicable to the tangible and physical assets but not applicable to the intangible assets.

Now that is not to say that there is no remedy for breach of that trust, but it is to clarify that this possible interpretation of the recommendation, as involving an unlimited liability, is simply not the case.

Finally, if there is no more discussion on this issue——

Commissioner **Whitecrow**. Mr. Chairman?

Commissioner **Borbridge**. Mr. Chairman?

Commissioner **Whitecrow**. I will yield.

Commissioner **Borbridge**. Thank you, Commissioner.

Mr. Chairman, are we saying then essentially that as a conclusion that where the law and the right of a tribe to seek remedy for the trust relationship pertaining to tangible assets is violated and the recourse of the law is quite specific, we are stating here then that with respect to the intangibles, such as services, while the course of seeking recourse may vary somewhat the obligation on the part of the U.S. Government, and therefore the right of the individual Indian tribe to insist on the continuation of that trust relationship and the fulfillment of obligations is just as precise and really does not vary ultimately. In other words, there may be a distinction that has been drawn between tangible and intangible insofar as implementation of that trust relationship, but insofar as obligation and rights we don't make a distinction there.

Mr. **Parker**. That is exactly the intent of the clarifying amendment.

Commissioner **Deer**. Mr. Chairman?

Chairman **Abourezk**. Ada?

Commissioner **Deer**. I just want to say that I think the chapter on the trust of tribal government is a beautiful example of legal draftsmanship and craftsmanship at its best.

Chairman **Abourezk**. You don't want to egg these guys on too much, Ada.

Commissioner **Whitecrow**. Mr. Chairman?

Chairman **Abourezk**. I would like to recognize you, Jake, but before I do that let me say that Lloyd and Sid have had to go for a vote. I have a vote up in the committee in about 2 minutes. So as soon as you are finished discussing, would you just recess the meeting until we get back here? I appreciate it very much.

Commissioner **Whitecrow**. I would like to ask only one question from staff. As you have indicated, you have issued some 1,200 copies of the tentative final report throughout the Nation and have no official correspondence or indication as to what type or what the numbers of comments were received in our office. I believe you told me you were expecting about 37 comments and that if we received 50 it would be an excellent response.

As I understand it now, we have not received any comments or criticisms in support, or criticism, whatsoever of the report from any State government, whether it be the attorney general or Governor of any State. Is that correct?

Mr. **Parker**. I would rather Max respond to that. He has been more on top of that.

Mr. **Richtman**. Pattie, are you showing Jake the material?

Ms. **Marks**. Yes; I am. We have put together an analysis of comments by chapter and an analysis of comments as to whether they were in support or critical of any particular chapter. We will distribute them.

Mr. **Parker**. They have been distributed.

Mr. **Richtman**. That includes a summary——

Commissioner **Whitecrow**. None of these are from State governments though; is that correct?

Ms. **Marks**. No, sir.

Mr. **Richtman**. We did have a comment from the Governor of Louisiana. I recall a comment that came in from the Governor of Hawaii.

Ms. **Marks**. I believe the total is five at this time. Not all comments have yet been recorded.

Mr. **Myers**. New Mexico, Louisiana, and Hawaii came in.

Ms. **Marks**. Comments from Washington State were received this morning.

Mr. **Parker**. There is a Montana Department of Community Affairs which I think is a State organization.

Commissioner **Whitecrow**. OK, fine. It looks as though we are receiving some good supportive comments then from those States which have responded.

Mr. **Richtman**. The material in the yellow envelope is a summary of the comments from each of the participants, organizations, or officials of tribes that responded. I remember reading comments that came in from the Governor of Louisiana, and the Governor of Hawaii, and they favored the report very strongly.

Commissioner **Whitecrow**. All right. Mr. Meeds and our chairman have departed and he asked me to recess the meeting immediately following my questions until he and you and Mr. Yates were able to return as the result of casting a vote. So with your concurrence, as vice chairman, we shall recess until the return of Mr. Yates and Senator Abourezk.

Congressman **Meeds**. Fine.

[Whereupon a brief recess was taken.]

Congressman **Meeds**. Let's proceed.

Congressman **Yates**. May I ask a question?

Congressman **Meeds**. The Commission will be back in order as regularly scheduled. The gentleman from Illinois?

Congressman **Yates**. May I ask a question of Alan? Alan, I looked through the comments on outside correspondence and one very simple comment has set me to thinking. A comment by Arizona Indian Centers saying: One: financial support for urban Indian centers should be based on need; and Two: urban Indians centers should be eligible for economic development funds.

I don't know quite what that means, except that economic development is always a concept of foreign aid to me, in a sense. We have agreed that the Indian people are entitled to Indian health centers in urban areas. How far does this concept extend? Are they entitled to urban schools for the Indian children as a special fund? Are they entitled to special consideration for their transportation needs? Are they entitled to special consideration, and funding with all of this for sanitation purposes? Where are you going to draw the limits, if you are going to draw the limits, on what urban Indian people are entitled to?

How far does the trust concept go, in other words?

Mr. **Parker**. I think it does come to that.

Congressman **Yates**. Yes. Is there a limit or is it unlimited?

Mr. **Parker**. My own view and this, perhaps, is not satisfactory——

Congressman **Yates**. May I ask first, have you addressed yourself to this in the report in any way?

Mr. **Parker**. We haven't attempted to draw tight lines.

Congressman **Yates**. You have not drawn tight lines? Well, what have you said in the report with respect to the Government's trust responsibility to the Indian people who live in the urban community? You have said that you are getting away from the previously accepted trust concept which stemmed from the resources of the Indian people into a new concept of services to the Indian people. In connection with that we talked about clinics or hospitals, if you wanted to take the next step for the urban Indians.

Where is the line? Is there a line to be drawn saying this is the extent of the responsibilities of the Federal Government, or does that trust responsibility include as well housing for Indian people who live in the cities apart from the other housing that is made available to them without race distinction? And where do you go? Where do you go in this concept with respect to the Supreme Court's decision in *Brown* v. *the Board of Education* which said that there shall be no distinctions on the basis of race for school facilities? The same concept is the subject of law and it is sustained by the Constitution with respect to other facilities. The concept being that there shall be no distinction drawn between people on the basis of race.

If you draw a distinction on the basis of urban health funds for the Indian people, are you not drawing a distinction on the basis of race? And what do you do with respect to the constitutional concept? If you are not troubled by that constitutional concept, are you then going to take the next step and say if the Indian people are entitled, as we do in our appropriations bill which we approved yesterday in my subcommittee, are you then going to say that the Indian people are entitled to special housing in urban communities because of the trust relationship? Are you going to say they are entitled to special school facilities because of the trust relationship? Are you going to say they are entitled to special transportation needs? Where are you going to draw the line?

Mr. **Parker**. Commissioner Yates, I think you are asking two related questions.

Congressman **Yates**. I thought they were all related.

Mr. **Parker**. They are all related. These are more tightly related. The analysis of people protection as a constitutional principle and the application of that to services which are provided solely for Indians on the basis of tribal affiliation was dealt with by the Supreme Court in the decision which addressed the Bureau of Indian Affairs services to Indians residing on nearby reservations. In that instance, the Supreme Court relied upon its precedents and concluded that this was not an equal protection issue. That the services which were provided to Indians—excuse me—that was *Warren* v. *Reese*. *Morton* v. *Mancari* was Indian preference. The Supreme Court decision in *Mancari* concluded that Indian preference is not inconsistent with the equal protection constitutional principle, and in that instance they concluded that it was not. That the preference, which was provided by law for Indians, in employment was given to Indians on the basis of tribal citizenship. They drew a distinction between race preference and political citizenship in a tribe. Of course, the obligation of the United States to the tribe falls against the backdrop of the development of the whole law. I don't have it at my fingertips but there are several other cases where that issue was raised similarly and analyzed by the Federal courts.

Mr. Ward just passed me a note. A recent case, *United States* v. *Antelope*, was decided 2 weeks ago by the Supreme Court. The thrust of the Court's decision, the distinction again is permissible under the Constitution between Indians and non-Indians.

The other part of your question, which I understand was of some concern—the chapter on off-reservation Indians—the chapter that deals with off-reservations Indians contains an admittedly brief analysis but it does conclude that residents off the reservation cannot bar the application of trust responsibility to those individuals. In other words, residence is not material to eligibility for trust services which is the "thread-hole" question.

Congressman YATES. It is a related question. But what we are talking about, really, is the extent of the trust responsibility.

Mr. PARKER. Right.

Congressman YATES. I think we have decided that there is a trust responsibility to provide health care for Indians. Is there an equal trust responsibility to provide for the schooling of their children in cities apart from the regular facilities that are made available in public schools? Is there an equal responsibility to provide for special housing for the Indian people apart from the programs that are made available through public housing? Would the Indian people get a preference because of the trust responsibility in connection with applications for housing in these facilities?

Congressman MEEDS. Would the gentleman yield?

Congressman YATES. Yes.

Congressman MEEDS. And, indeed, would the Federal Government be liable for damages if they don't furnish them? If it is a trust responsibility, in all probability they would be.

Could I, also, just limit *Mancari* somewhat? The question in that case was a question of a federally recognized tribe and a preference for a member of a federally recognized tribe, and the Court specifically limited it to tribal groups, not Indians as Indians. And that is one distinction that they made. A distinction on the obligation to tribal group rather than Indians as Indians. I think that is very important because that would mean that the question of equal rights could very easily be raised on the question of the schooling of members of nonfederally recognized tribes in cities and other things.

So I think it is very important that *Mancari* be restricted to what really was and not for the proposition that Indians can be treated differently in all respects and still not have a violation of the 14th amendment.

Congressman YATES. But we are moving from that. We are not using the *Mancari* case, as I understand, in what our presentation of the trust responsibilities of the United States is. What you are saying is that it goes through the tribes to the individuals so that an individual in the city would nevertheless have the benefits of a trust responsibility by the Federal Government to health, to schooling, to housing, to any of these provisions. Governmental provisions that the Government makes available to the public. Is this what you are saying?

Mr. **Taylor**. I think your statement is correct. I think the theory does rest on *Morton* v. *Mancari* which is not a new doctrine. In fact, it is quite old. If we go back to *United States* v. *Holliday* in 1846.

Congressman **Yates**. But you have gone a step beyond *Ruiz*. In the *Ruiz* case they lived fairly close to the reservation. What you are saying now is they don't have to live fairly close to the reservation. As a matter of fact, if there is a member of the Navajo tribe who is working in New York, he nevertheless has the benefits of the trust responsibility that exist between the Federal Government and the Navajo, so that it flows through the Navajos to him in New York City and he then is entitled to be treated in a trust relationship with the Federal Government.

Is that a correct depiction of what your concept is?

Mr. **Taylor**. Yes; but I would like to qualify some of this. Mr. Meeds, you were absent during some of this discussion. We have made amendments in this section 4 specifically to deal with the problem of possible liability of the United States for failure to deliver social services. Any damages in a deal like that would be highly speculative and I don't think any court would ever award any.

We specifically recommend that the liability and this part occurred just before you left, the liability——

Congressman **Meeds**. Where are we? What page?

Mr. **Taylor**. Page 4–20.

Congressman **Meeds**. Is that on liability now?

Mr. **Taylor**. Yes.

Congressman **Meeds**. I don't see anything on 4–20 about liability.

Mr. **Taylor**. It is paragraph A–1 and it is in the paragraph numbered 1.

Congressman **Yates**. But accompanying the question of payment of damages versus the question of specific performance you are getting into equitable remedies as well. Suppose the Navajo, about whom I am speaking, in New York City files suit about providing a house for him.

Mr. **Taylor**. Mr. Yates, my response to that is that in the paragraph immediately preceding that we are talking about the standards that the United States should live up to in that trust responsibility. And the objective, or the standard, would be one of bringing the Indian people to the standards of social and economic well-being that are enjoyed by the rest of the American public. I think that is a pretty conservative statement.

Congressman **Yates**. How do you establish that standard? What is the standard enjoyed by the rest of the American public? What do you compare it to?

Mr. **Taylor**. It is substantially better than that which is enjoyed by the Indian people—which is why we included the chapter on demographics—because they rank at the very bottom in virtually every scale we can exhibit.

Congressman **Yates**. Just by way of information: How are those standards established? Is that done by the Department of Labor?

Mr. **Taylor**. The Bureau of Census does some.

Mr. **Parker**. In reference, for example, to a service which HEW would provide. They set standards for eligibility for welfare services and so on. If you fall below a certain level——

Congressman **Yates**. We are presented with graphs showing that Indian children suffer more cases of otitis media than others. OK. Then where are we with respect to the limitations of the principle?

Mr. **Parker**. I think the attempt has been to try to carefully preserve the concept of the trust running to an individual who is not on the reservation. That is our first premise. We have not attempted to delineate the specific services for which that trust runs. Obviously, health centers, Congress has recognized that——

Congressman **Yates**. Now I ask a question. Suppose the Navajo living in New York City wants to exercise his trust responsibility. May he do that as an individual or must he do it through the tribe?

Mr. **Parker**. In my opinion he would do it as an individual if he were denied that service which other individual Indians were receiving.

Congressman **Yates**. Other individual Indians or other people?

Mr. **Parker**. If we are talking about a trust service—other individual Indians.

Congressman **Yates**. Other individual Indians. We are talking about trust responsibility and, therefore, the standards to which he is held, if I understand you correctly, are the services provided other Indians.

Mr. **Parker**. I think there is a distinction. If a Navajo individual feels he is being denied a trust service in an urban area, the basis for his claim is based upon the availability of the trust service. Now the standard for that trust service is a slightly different question. Whether he is receiving a service which meets the standard——

Congressman **Yates**. Not of other Indians, as you say, but a level comparable to the non-Indian society.

Mr. **Parker**. We articulated that as an obviously general standard, rather than having no standard.

Congressman **Yates**. How does he enforce his right? Does the tribe enforce it for him, inasmuch as it flows through the tribe, or do you propose to give him that right separately and let him sue? Or, do you require him to go back to the tribe and if the tribe doesn't do it, then his right becomes fixed.

Mr. **Parker**. I think it has to vary according to the specific instance. Now urban health centers are a very good example, if we are talking about an individual Indian who is in an urban area where Congress has decided to establish an urban health center, this is a trust service. That individual is denied that trust service, then he asserts his eligibility for that available trust service.

Congressman **Yates**. Some of the appropriation bills funds are provided for the construction of housing on reservations. Is that a right—for housing to carry over to an urban community?

Mr. **Parker**. No; I think it is clearly limited to the reservation for which it was authorized.

Congressman **Yates**. All right.

Congressman **Meeds**. Does the urban Indian then, however, have an entitlement to the same kind of housing service in the city where he lives? That is the obvious follow-on.

Mr. **Parker**. To the same kind of service that is made available to the reservation Indian?

Congressman **Meeds**. Yes.

Mr. **Parker**. I think that he is not entitled if he is off the reservation. The service is provided to the reservation Indians. If he moves back to the reservation, he would be entitled on the same basis as other reservation Indians.

Commissioner **Whitecrow**. However, are we not making a distinction between the urban and the reservation Indian at that specific point?

Mr. **Parker**. With respect to a service which has been identified and provided by Congress specifically for reservation Indians as the Indian Housing Service is.

Commissioner **Whitecrow**. Is not that individual living in the metropolitan area still as eligible for services delivered to his tribe wherever he may be?

Mr. **Parker**. This is why it has to be analyzed in the context of specific instances.

Commissioner **Whitecrow**. We are touching on a point here which we discussed previously in our educational delivery money.

Mr. **Parker**. Yes; education is another example where I think the application would be somewhat different.

Commissioner **Whitecrow**. Whereby everything should come through the tribe. The individual then would go back to his tribe rather than have any recourse against the Federal Government. The tribe should have a recourse in the event there is violation of trust responsibility.

Congressman **Meeds**. I would like to followup on my question here. How does what you have answered to my question about the responsibility also extending into the person in the urban area a member of that tribe with No. 3 on 4–21, "trust responsibility extends through the tribe to the Indian member whether on or off the reservation."

How does your answer square with that recommendation?

Mr. **Parker**. "The trust responsibility extends through the tribe to the individual on or off the reservation." It is a statement of principle. General principle. What we are saying is that residency does not affect eligibility. We are addressing the point Mr. Yates raised earlier: Does this trust responsibility stop at the reservation line. The answer is no. It extends on or off. But as I tried to point out earlier I think this can only be logically analyzed in the context of specific instances.

Congressman **Meeds**. You are talking about a right without a remedy then?

Congressman **Yates**. If you would yield, please.

What about in response to Mr. Whitecrow's question in regard to education? As I understand your reply to him, you would require that the Indian go back to the reservation to achieve his education. Did I misinterpret what you said?

Commissioner **Whitecrow**. I think so.

Congressman **Yates**. Would you repeat, then, what your reply was?

Mr. **Parker**. Education viewed as trust service—the individual who is off the reservation is eligible for BIA scholarships. I don't think that that has even been challenged.

The fact that he is off the reservation does not affect his eligibility at all.

Congressman YATES. What about elementary education?

Mr. PARKER. My own feeling is that elementary education, which is provided on a reservation basis——

Congressman YATES. I am thinking of the urban Indian.

Mr. PARKER. That is what I am getting to.

Congressman YATES. Oh, I am sorry.

Mr. PARKER. The Congress has provided boarding schools, Government schools on reservations in some instances, schools that are off the reservation, but students are sent from the reservation.

Congressman YATES. So, essentially, the urban Indian then may go to the schools that Congress has provided for the tribes, whether on or off the reservation.

Now, is there any responsibility on the part of Congress to provide such schools within the limits of the city to take care of the number of Indians who may be there or must they, if they want to take advantage of the trust responsibility, go to the places that Congress has already provided?

Isn't that the essence of your question?

Mr. TAYLOR. I think that the trust responsibility would extend to Indians off reservations in such areas which are presently funded through Johnson-O'Malley funds and appropriated moneys that are passed on to the estates for specific purposes of having supplemental education programs for Indians.

One of the problems that we found through examination the past 2 years is that moneys that pass through the Johnson-O'Malley funds that are designed specifically for Indian programs actually are put in to general school facilities to benefit all people. For example, building a gym. It is an area of complaint.

Congressman YATES. We are finding in work in my subcommittee that in at least five States the States are not putting up any matching fund for Johnson-O'Malley in a number of instances.

So we have put in Federal funds to make up the difference. I assume that that is a carryon of the trust responsibility. Even if the States don't comply, the Federal Government, nevertheless, must provide for education of the Indian children.

Is that right?

Mr. TAYLOR. I think there is trust responsibility to do that, yes. Again, the choice of how this is going to be done is always within the power of Congress.

Congressman YATES. Incidentally, what they did was to deduct from those States benefits from hatcheries and so on that correspond to the amount that they didn't furnish.

Congressman MEEDS. If I could follow up with my question and see if I understand you——

Congressman YATES. South Dakota was one of them, by the way.

Congressman MEEDS. If you are saying that the trust responsibility extends to those people, but that the fulfillment of that responsibility may be exercised on the reservation and the individual must come back to take advantage of it, then I might understand you.

Mr. TAYLOR. No; that is not what I am saying and I don't think that we are saying that here either.

Congressman MEEDS. I don't think that you are saying it here either, but I just got the feeling that that is what somebody was just saying out there.

Commissioner Dial. Mr. Chairman——

Congressman Meeds. Let me follow through so that I can get this cleared up here.

Mr. Taylor. I think that was a question Mr. Yates asked Mr. Whitecrow. That is how that got in there.

Congressman Meeds. What you are saying then is: This is a special responsibility for the Federal Government to provide education to a Navajo Indian who is now residing in Chicago.

Mr. Parker. For higher education. The education benefits for higher education scholarships.

Congressman Meeds. What about elementary and secondary education?

Commissioner Whitecrow. Mr. Chairman——

Congressman Meeds. No. Let me just get an answer. Let me follow this up now until I get some answers to it.

Mr. Taylor. Yes. I would say that there is trust responsibility.

Congressman Meeds. There is trust responsibility for the Federal Government to provide elementary and secondary education to a Navajo Indian who is no longer on the reservation but is residing in Chicago.

Mr. Taylor. If the public school system does not offer such education, then I would say that the Federal Government would probably be responsible for providing Federal funds specifically for that purpose.

However, the public school systems are there. What we talked about normally is either special Indian education or programs, as we have black studies and all kinds of studies in this country today, special and supplemental, bilingual education.

Congressman Yates. Would you yield? He is trapped.

Congressman Meeds. Exactly.

Congressman Yates. How do you reconcile this statement with what you are doing in the case of Indian health?

In other communities other clinics are available that are provided by the community, just as you suggested that education was provided by the community and the Indian children should go there.

Mr. Taylor. But I submit, that Congress has been providing services to urban Indians for some time now. The Snyder Act, as early as 1921, authorized expenditures anywhere in the country for this purpose. As early as 1912 education funds.

Congressman Yates. But that is the Snyder Act, not the trust concept.

Mr. Taylor. I don't rest the trust on the Snyder Act.

Congressman Yates. I didn't mean to trap you.

Commissioner Dial. It seems to me you are discussing this report in the light of the bill that Congress is getting ready to pass on. Aren't you making broad recommendations?

Congressman Yates. No.

Commissioner Dial. Yes, we are. We are stating conditions of the act in saying that the American Indian needs this and this. Now, if you pass a housing bill for a reservation, for the Navajo Reservation, then it is quite obvious that that is a bill for the reservation.

If you pass a bill to provide funds for education to all Indians, then that is a bill that applies to all Indians regardless of where they are, such as our present title 4 Indian Education Act.

Now, I don't see where it gets so involved—they have no problem much with dealing with this today saying that urban Indians and nonfederally recognized Indians are entitled to certain special programs.

This is really not a problem, but I will give an example. In Riverson County we receive more than $500,000 for nonfederally recognized Indians—the Lummi Indians. More than $500,000. I believe that we are second to the Navajo for education.

But this doesn't entitle us to housing benefits that are intended for reservations. You see? So there is really no conflict.

I think that you fellows are nitpicking here on problems really that don't exist and won't exist. The Congress will take care of them when the time comes.

Chairman **Abourezk**. May I interrupt here?

I have made a reservation for two tables of four people each.

Congressman **Yates**. Suppose we go off the reservation?

Chairman **Abourezk**. This is a nonrecognized reservation. The staff is going to have to fend for themselves during lunch hour.

We will recess for half an hour in about 5 minutes and try to eat quickly and come back. Before we do that, Sid and I have worked out a compromise paragraph which will appear on page 3–14.

Congressman **Yates**. Is that all right with Lloyd? Does he accept that?

Chairman **Abourezk**. He hasn't seen it yet.

Congressman **Yates**. Has Mr. Martone seen it?

Mr. **Martone**. No; I have not.

Chairman **Abourezk**. We have just agreed on it. We are going to read it and pass on it.

Mr. **Parker**. I can read it quickly, Mr. Chairman.

Congressman **Meeds**. I think you ought to at least give me a trial before you hang me.

Chairman **Abourezk**. What is wrong with having it read?

Congressman **Yates**. What about what they say about the power of Government not entirely premised on natual rights and justice?

Chairman **Abourezk**. I think in view of the complaints about reading it and discussing it, let's pass it without reading it.

Go ahead, Alan.

Mr. **Parker**. Proposed substitute paragraph, page 3–14: "Powers which spring from concepts of natural right and justice are premised on a measure of consent by the governed. The history of Federal dealings with the Indian people has much too often been rule based on power, rather than on consent of the governed."

Congressman **Yates**. That is true. I could have said that.

Chairman **Abourezk**. I think that says pretty much what you intended. Does anybody have any comment on that?

Congressman **Meeds**. Wait till I see it, Mr. Chairman.

Congressman **Yates**. It sounds as though Lloyd wrote it.

Chairman **Abourezk**. He probably did.

Commissioner Dial. That is not as strong as the way that we had it amended the first time.

Congressman **Yates**. That is pretty good.

Congressman **Meeds**. Mr. Chairman, I will just simply vote against it, but let me point out several things that I have in opposition to it right off.

"Powers which spring from concepts of natural right and justice are premised on a measure of consent by the governed." At the least the original concepts of right and justice are religious concepts and there was never any concept of consent of the governed.

Congressman Yates. That is not true. Not according to Thomas Jefferson.

Congressman Meeds. The history of Federal dealings with Indian people has too often been based on notions of power rather than consent of the governed.

I think that this Commission is in no position to talk about the consent of governed when later we are going to accept some recommendations which will put a number of non-Indian people, who are located on reservations, under the authority of tribes and tribal government over which they have absolutely no power.

Congressman Yates. But you deal with that when you come to it. This is chapter 3.

Chairman Abourezk. The question is on this language then as a substitute for the top paragraph on pages 3-14. Do you want a rollcall on that?

Congressman Meeds. No.

Chairman Abourezk. All those in favor will say "aye."

[Chorus of ayes.]

Chairman Abourezk. Those opposed, "no."

Commissioner Dial. No.

Congressman Meeds. No.

Chairman Abourezk. All right. It is agreed. The "ayes" have it.

Mr. Parker. Mr. Chairman, we have one final response to the discussion preceding this.

Chairman Abourezk. OK; we will get back to that discussion.

Jake, I think, wanted to be recognized. Then we will try to get on with eating.

Commissioner Whitecrow. There was a question here. We are talking about social services—education and health of urban Indians as an expressed responsibility—are we not also saying that the delivery of trust responsibility is assured for tangible objects, such as housing, such as credit and finance for urban Indians? Is that not included in this trust responsibility carrythrough insofar as the individual Indian off reservations?

Mr. Parker. I think tangible is used in a different sense. Our distinction between tangible and intangible: tangible meaning trust, physical resources; intangible meaning services.

Before we broke off the last discussion, Ms. Ducheneaux reminded me that Congressman Meeds used to be a prosecuting attorney, so we shouldn't feel too bad. This will be very brief in response to where our discussion left off: the distinction—a Navajo living in New York who is denied health services by the State of New York because those health services cost money is provided health services through urban Indian health centers. That is a trust responsibility.

The Navajo living in New York who has available to him three primary and secondary education services is not provided those services through special Indian programs.

Congressman Yates. But suppose he has a free health clinic instead of having to pay for it?

Mr. **Parker.** I think that this would bear on the Federal Government's decision to extend those services.

Congressman **Meeds.** Under the new health act you would have those services available to him in New York anyhow.

Congressman **Yates.** That is true. Also, he is limiting the doctrine now. What would your answer be to Commissioner Whitecrow with respect to the provision of credit?

Mr. **Parker.** Admittedly, we haven't followed this out and I think the decision was consciously made not to try to draw these things out.

Congressman **Yates.** We are trying to deal in concepts, but when we deal in concepts, you still have to deal in terms of what questions may be addressed to us at such time as the bill is filed on the floor and some Member of Congress poses questions of this type.

We do know, getting back to Commissioner Whitecrow's example, the Federal Government has established certain credit funds for Indians who live on reservations or near reservations. So it is in order that we inquire as to what happens with respect to an Indian who wants to buy a house in the city of New York or a Navajo in the city of New York who can't get credit from a bank, or who can't get credit from a savings and loan association.

Can he go to the Federal Government and get it or does he have to go back to his tribe to try to get it through one of their loan funds or one of their industry funds? What happens to that poor Navajo who finds himself in New York?

Would you like to think about that over lunch?

Mr. **Parker.** Yes.

Congressman **Yates.** All right.

Chairman **Abourezk.** We will now recess for 30 minutes for lunch.

[Whereupon, at 12:25 p.m., the meeting recessed, to be reconvened at 1 p.m., the same day.]

AFTERNOON SESSION

Chairman **Abourezk**. I will call the Commission back into order.

Congressman **Meeds**. Mr. Chairman, I think that it would be a good idea if we heard Mr. Martone on this whole question of trust and the changes that were made. Just a general discussion of page 4–20 and 21.

Would you like to give us your views on that, Mr. Martone?

Mr. **Martone**. Of course, the basic provision in the trust responsibility is articulated in your dissenting vote, but with respect to the specific change, I am not at all sure that I understand the change. It seems to now make the distinction between trust resources on the one hand and the providing for services and self-government on the other and, at least, seems to suggest that the duties of the fiduciary only apply to trust resources as opposed to those other elements of what it defines as trust responsibilities.

And yet, paragraph A–1, page 4–20——

Congressman **Yates**. Page what?

Mr. **Martone**. Page 4–20, paragraph A–1 still describes trust responsibility as a legal obligation which includes the providing of services and advancement of tribal self-government.

My own position would be that maybe the policy of the United States is to provide economic and social services and it may be the policy of the United States to enhance and protect tribal self-government, but it has never been a legal obligation.

Of course, this goes back to the discussions we had several months ago. If it is a legal obligation, then it seems to me there ought to be ways to enforce these rights. There is nothing in here that suggests how one would enforce those rights, if they are rights.

My own view is that the legal obligations of the United States are defined by existing treaties and statutes and anything beyond that are policy considerations properly within the scope of Congress' power to define what is or is not wise public policy.

Congressman **Yates**. Do you not recognize any trust responsibility at all?

Mr. **Martone**. I recognize the use of the word trust in connection with an Indian tribe or Indian affairs only as it is used to describe situations where the United States is holding in trust for a tribe, tribal assets, such as land.

Chairman **Abourezk**. Is that the extent of your recognition of trust responsibility?

Mr. **Martone**. Yes.

Congressman **Yates**. Then you recognize no trust responsibility by the United States which extends beyond the trusteeship that may exist between the United States and Indian tribes arising from so-called trust resources of the tribes.

Mr. **Martone**. I am sorry, Mr. Yates. I am not clear. Would you repeat that?

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Congressman YATES. Your concept of a trust responsibility by the United States to any Indian tribe would exist only with respect to specific trusts that have been so designated.

Mr. MARTONE. That is correct. That is traditional trust law. I think the whole use of the word trust as used in this Commission's report is a misapplication of trust law doctrine.

I think, as Mr. Meeds stated in his dissent, it is an attempt to seek policy decisions under the guise of legal obligation. For example——

Congressman YATES. May I ask that we defer this, Mr. Chairman? I am told that we have a vote in the House.

Congressman MEEDS. I would like to ask one quick question before I have to leave, because I am going to have to stay over there for a little while.

Are you aware of any case, or any statute, which requires as a trust responsibility of the United States to protect and enhance tribal self-government?

Mr. MARTONE. I am not.

Congressman MEEDS. Are you, Peter?

Mr. TAYLOR. Mr. Meeds, just off the cuff, the nearest I think I could come would be 25 U.S.C., section 175, where the United States charged itself with a mandatory responsibility to represent Indian interests and later amended that law. Court decisions have made it discretionary. But that would be a statutory thing. That does not use the word "trust." There are other sections in that code that provide for other protection of the land. I think in section 177.

Congressman MEEDS. I understand about protection of the land. I was just saying trust responsibility to enhance tribal self-government. I am aware of none. Now, there may be some, but I am not aware of any.

Mr. TAYLOR. There are statutes to that effect?

Congressman MEEDS. Statutes, or treaties, or anything else?

Mr. PARKER. Treaties, yes.

Congressman MEEDS. There are some treaties?

Mr. PARKER. Yes.

Chairman ABOUREZK. We are in recess for 15 minutes.

[A short recess was taken.]

Chairman ABOUREZK. We are not in recess. We have already voted on this concept, so I don't think that we need another vote on it.

Was there anything substantial, then, in this area that we have to concern ourselves with?

Mr. PARKER. The recommendations were not changed at all.

Commissioner BORBRIDGE. Mr. Chairman.

Chairman ABOUREZK. Yes.

Commissioner BORBRIDGE. I just have a comment here. It seems clear to me that unless we are careful we fall into the proposition wherein on the one hand, you are seeking legal precedent which comes down on all fours so that we are comfortable that any policy that this Commission may propose is thus supported. In fact, it is the responsibility, as one goes to the legislation creating this Commission, for us to move from the points that we consider to be rational to the points that we consider to be in the best interest, not only of the Indian tribes, but of the United States. It is incumbent on us to demonstrate vision.

I think that it is very fortunate that the Commission has the mixture of representation that it does have because otherwise I think we would be bound forever to sorry devices and I think we would never catch ourselves looking ahead for fear somehow that we were not able to pull a writ out that would make it possible for us to move ahead.

I think that the language which I find on page 4–15 makes it quite clear that under the title, "Development of a Sound Trust Responsibility", the first sentence reads and I quote: "The first paragraph of the recommended policy statement A–1 below proposes an explicit recognition that the trust obligation is limited historically * * *" and then the rest follows along. What this says to me is that there are statutes, there have been treaties, and that it may well be that there may be an insufficient number of cases that we can cite to cover all points.

We are moving from this point in seeking to make it abundantly clear that we are now moving toward a matter of policy and that instead of having these gray areas where agencies are left with entirely too much discretion to the detriment of the Indian tribes, the policy, if it is enacted, as I anticipate that it will be forthcoming from the Commission, will make it clear that there is an obligation.

It will tend more to define those areas of trust responsibility. I am certain that we could argue at this point that there are gray areas. That is why there is a Commission to sharpen up on those gray areas so that they will no longer hamper the implementation of the policy.

Thus, I am not at all bothered when I hear occasionally there is not a case there to support this definite point. It is a point to build on, but thank goodness, that is not the place where this Commission is going to end.

Chairman ABOUREZK. Do you want to move on to the next area?

Mr. TAYLOR. I think we had just as well.

The next chapter is on tribal government.

Chairman ABOUREZK. Chapter 5?

Mr. TAYLOR. I think that Alan will handle the initial presentation.

Chairman ABOUREZK. Remember we are just going through the substantive changes; right?

Mr. PARKER. That is right, Mr. Chairman.

Chairman ABOUREZK. Let me just say to the members of the Commission that I am preparing a rebuttal to Lloyd Meeds dissent which, since it consists of separate views of mine which deal with the dissent itself, does not need to be voted on.

It is just automatically inserted in the report as separate views of the chairman.

Mr. PARKER. Mr. Chairman, referring again to the booklet which was distributed describing changes: Chapter 5: Tribal Government, on the first page on the tribal government section, it refers to organizational changes.

I would refer the Commission to the text which was distributed to you with the revision, turning to the table of contents of tribal government. I think those organizational changes would be readily apparent; in the March draft release the material had been organized differently.

It has been reorganized to present a more apparent subject development as evident from the three new title insertions: I. Fundamental

Elements of Tribal Government; II. Federal Constraints on Tribal Government; and III. Status of Tribal Governments in the Delivery of Services.

The material was reorganized into these three basic subject areas. Additional material is moved from the chapter on economic development to this chapter on tribal government, specifically, the section on taxation and the section on hunting, fishing, trapping, and gathering rights.

The staff decision was made in response to comments received that these subject areas of taxation in hunting, fishing, and gathering rights were more appropriately inserted under the tribal government chapter.

Turning to the second page of the booklet under changes in chapter 5, there is a discussion of the fact that new textual material that is in the narrative was inserted when taxation, as a subject, was moved to tribal government.

There is an omission in your booklet. There should also be a reference to the fact that hunting and fishing was moved over and that begins on page 5–7.

So, under that paragraph entitled taxation in hunting and fishing, page 5–7, I think that it would be more appropriate just to refer you to the pages where this new textual material begins, which is page 5–46.

There are two basic themes which were developed in the textual material on taxation. The first theme is an elaboration of what is called revert and benefit analysis question of taxation.

The second theme develops the comparison between taxation as exercised by tribal governments in comparison with taxation powers as exercised by State governments.

Now, the first theme, the burden benefit analysis, is something that Peter developed. I would just as soon he elaborated on that.

Mr. TAYLOR. This is sort of an underlying basis for a lot of the criticism that we have been receiving from non-Indian sources in Indian country. It is clearly an issue, I think, that is highly misunderstood. The exact economics of the locale around Indian reservations and there is, I think, a misperception to the effect that Indians receive social benefits. Indians don't pay any taxes; that this is highly discriminatory and it is causing a burden on the local non-Indian community.

I think, in some instances, it does. There are times when there is some legitimacy to this argument, but I think that the argument really has to be carefully examined. First of all, from the standpoint that Indians don't pay taxes—that, essentially, is not a true statement.

Indians pay most of the taxes that anyone else does. I think that one of the biggest problems is that most counties finance their governmental operations through real estate tax. County governments are almost unique in that. I don't know of any States who impose general real estate taxes, and the Federal Government certainly doesn't.

So, of all of the governmental units that we have in the area for concern, it would be only county governments. We point this out in this introduction and we acknowledge that in some instances there may be some legitimacy to this complaint.

We also point out that Indian people do pay almost all of the taxes that any other citizen in this country pays—both Federal and State.

Then a third area that we point out is the comparative financial benefits that the local, non-Indian community is consistently deriving from the fact that the Indian communities exist as Indian communities where they are and we use a study that was financed by the Ninth District of the Federal Reserve Bank at Yankton Reservation in South Dakota.

I think that there are some incredible financial flow statistics that were generated there as to the amount of Federal money that is going into this extremely small reservation. The kind of turnover of these Federal moneys, namely, the Indian community essentially has no economic enterprises whatsoever at that reservation.

So every dollar that goes into that Indian community immediately goes to the cash registers in the local town.

Chairman **Abourezk.** Do you have a copy of that study?

Mr. **Taylor.** Yes; I have.

Chairman **Abourezk.** May I have a copy of that?

Mr. **Taylor.** Yes; I would like very much to give it to you.

Chairman **Abourezk.** When?

Mr. **Taylor.** This afternoon.

Commissioner **Whitecrow.** Could you make several copies of that for us?

Mr. **Taylor.** I have been trying to order more from the Federal Reserve Bank.

Mr. **Parker.** It is a short, concise study.

Chairman **Abourezk.** I want to send a copy of it to the newspaper on that reservation.

Mr. **Taylor.** We cited here a paper that was published in the Congressional Record, at the request of Senator McGovern, concerning the economic problems at Thorsen County, S.Dak. I think this Yankton study brings a new perspective that simply needs to be examined when we start talking about these benefits and burdens.

So, essentially, this new introductory material refers to that. It also refers to a study in Arizona which, Mr. Chairman, I would like to send to you, which studies Federal cash flows, and tribal cash flows in the State of Arizona.

I think a lot more material of this nature should be developed. I feel like most of the discussion in this tax area is based on an emotional level without an examination of the facts.

This is an attempt to supply some of that.

Mr. **Parker.** I might also add something which we learned later and probably should have inserted, but at any rate, a bill has been introduced in the Senate and I believe our chairman added an amendment to S. 1368, the payment in lieu of taxes bill, which is also designed to alleviate the potential burden which local units of government would suffer as a result of having federally held land within their jurisdictions. It is basically an impact aid.

Chairman **Abourezk.** It is payment in lieu of taxes. That is what it is called.

Mr. **Parker.** And your amendment meant to include any Indian reservations within the definitions so those counties that have Indian reservations participate in this funding system. Is that correct?

Chairman **Abourezk.** Yes.

Mr. TAYLOR. I might make one further comment there.

The chairman of the National County Organization conferred with us in a meeting at Billings 2 weeks ago. I asked him how many counties were significantly impacted by the fact of having Indian reservations in their area. I am not sure of the accuracy of his collection methods.

But his statement to us was that there are approximately 200 counties throughout the entire United States that are significantly impacted. That seems like a very small problem for the National Government to be able to deal with.

Chairman ABOUREZK. Any questions in that area? If not, let's move on to the next one.

Mr. PARKER. Referring to pages 5–63 through 5–67, this is where the comparison is drawn between Indian tribes imposing taxes on the same basis that States impose taxes.

Essentially, the proposition is that when a tribe imposes a tax on nonmembers who are transitory on the reservation—they pass through or they are tourists or what ever—using no appreciable distinction between a tribe imposing that kind of a tax and the State imposing that kind of a tax. The State imposes sales taxes, et cetera, on tourists who come on and off within the States, just as a tribe does.

It might come into a tribe, under our analysis, to impose taxes on industrial development and natural resource development on reservations. Again, we see no distinction between a tribe imposing that kind of a tax and the State imposing that kind of a tax.

If you are talking about a powerplant or a strip mine or whatever which comes on to a reservation in New Mexico and it is owned by a corporation which is located in Delaware or whatever, there is no constitutional problem with the State imposing a tax on that enterprise, a license to do business with a variety of excise taxes.

In the same manner, if that enterprise begins or is initiated within a reservation boundary, we see no difference in the basis for the tribe to impose that same variety of taxes.

Again, this is new material intended to elaborate on the rationale for the recommendations and in response to comments that we have received on the tentative draft. I emphasize again that the recommendations themselves have not changed. That would be our discussion of the new material, Mr. Chairman.

Chairman ABOUREZK. All right, move on to the next area.

Mr. PARKER. Hunting and fishing would be the next area.

Again, the booklet that was distributed indicates that hunting and fishing——

Chairman ABOUREZK. What page and chapter are we looking at?

Mr. PARKER. Chapter 5, page 5–70, and the recommendations are on page 5–78.

Chairman ABOUREZK. Have you changed those recommendations?

Mr. TAYLOR. Mr. Chairman, I think that we probably have.

Chairman ABOUREZK. Then go ahead and discuss the changes.

Mr. PARKER. The recommendations which follow the discussion of hunting and fishing were, as I said, formerly in the economic chapter. They were directed to the concept of hunting, fishing, et cetera——

Commissioner WHITECROW. Mr. Chairman, may I interrupt?

It is apparent that we have two Commissioners here who do not have a complete chapter 5.

Chairman **Abourezk**. All right. Can staff provide that?

Mr. **Parker**. Beginning on page 5–70 and extending through page 5–78, is a fairly concise analysis of hunting and fishing rights.

The next heading is "Off-Reservation Rights and Regulations—Limit of State Authority."

The next heading, page 5–74, is "Tribal Authority."

Page 5–75, heading is "Need for Federal Involvement," and a summary and recommendations begin on 5–78. The material was prepared by an individual who was formerly with the Commission and we did not formally prepare this, although it was edited by us and the recommendations are probably most relevant to direct your attention to.

Turn now to 5–78.

Mr. **Taylor**. There are four very basic recommendations here. I think that I should read them and then discuss what they mean.

"A comprehensive management plan on fish and wildlife sources, in which Indian people have an interest due to treaty rights or Federal law, must recognize that there is a legitimate management interest."

What this is saying is that Indian people must be involved in the management of their own trust resources.

Commissioner **Borbridge**. Mr. Chairman.

Chairman **Abourezk**. Yes.

Commissioner **Borbridge**. On that I would like to see that additional sentence, because as I read it now, Mr. Chairman, it "must recognize that there is a legitimate management interest," does not adequately spell out what that interest would be; the sentence that you had does so adequately.

Mr. **Taylor**. The sentence as I said it—perhaps this should be put into a motion form and it would be as an additional sentence to the one that I just read—"Indian people must be involved in the management of their own trust resources."

Commissioner **Borbridge**. Does that require a motion, Mr. Chairman?

It just refers to the proposed addition of one sentence which would follow the first sentence of the recommendations on page 5–78.

You might read that one sentence once more.

Chairman **Abourezk**. I assume that if you want to make a change, it would require some kind of a consensus on the part of the Commission.

Mr. **Taylor**. Perhaps we should run on through the rest of these.

Chairman **Abourezk**. Before you run on through the rest of them, Pete—and I hate to sound like a broken record—but in looking over what you call recommendations, they don't look like recommendations to me.

Mr. **Taylor**. I see that they don't follow the format we tried to set in the rest of this.

Chairman **Abourezk**. I am glad that you said that. I don't want to say more than what I have said about 800 times already.

Mr. **Taylor**. They should either direct the Congress or the Federal Executive or the tribes.

Chairman **Abourezk**. That is the purpose of the report.

Mr. **Taylor.** I agree.

Chairman **Abourezk.** I don't know from looking at this who ought to do what and what it is that who it is ought to do.

Perhaps we ought to pass over this for the time being, and perhaps somebody ought to go off right now and rewrite these recommendations and bring them back in maybe half an hour so that the Commission can have something to pass on and if you want to include John Borbridge's amendment in there, that is fine.

Mr. **Taylor.** Yes, Mr. Chairman, we will do that.

Chairman **Abourezk.** Is that agreeable with the Commission?

Mr. **Parker.** I suppose we can finish off the changes in chapter 5 while we wait.

Chairman **Abourezk.** Are there any other recommendations that look like this in the book?

Mr. **Taylor.** I don't think that there are.

In economic development. I know that we formulated them all by directing the Congress, the Executive, and the tribes. We were very careful about that in the other chapters. I think that this is a unique occurrence.

Chairman **Abourezk.** OK; go ahead and finish.

Mr. **Parker.** Mr. Chairman, the March draft of chapter 5 had two separate sections; one entitled "Political Relationships in the Indian Reorganization Act" and a separate section entitled "Administration of the Trust Responsibility by the Bureau of Indian Affairs."

Those two sections were condensed and combined with the revision. Again, I will emphasize that the recommendations themselves were not changed. The subject matter was very similar and simply condensed for the purpose of organization.

So just to point out that change again—no change in the recommendation—where you have previously two separate sections, we only have one section entitled "The Indian Reorganization Act of 1934" on page 5-79 of the draft.

So that is a change and yet no change in the recommendation material combined.

If you have no further questions, that is the extent of the changes in chapter 5.

Chairman **Abourezk.** Would you like to move on to the next chapter then? We will come back to this particular section when the recommendations are done.

Mr. **Taylor.** The next chapter on the agenda is chapter 8.

Chairman **Abourezk.** All right. Proceed.

Commissioner **Whitecrow.** Mr. Chairman, before we proceed with chapter 8 I would like to take just a few moments to give credit where credit is due in the specific instance here. All too often we receive all kinds of criticism. And all kinds of slams—it is always easy to criticize an individual or a situation—I don't think we, as people, really give credit where just credit is due.

I would like to take just a second here to make a comment in regard to some information I received this morning. It is my understanding that Congressman Sidney Yates—incidentally, he did not give me this information——

Congressman **Yates.** You are delivering it just the way that I wrote it, Jake.

Commissioner **Whitecrow** [continuing]. But he brought about a great additional appropriation for the Indian Health Care Improvement Act. I think we need to give him a great vote of thanks, especially I do as an Indian, for this work because it will bring about tremendous improvement in the field of health care for Indian people all over the Nation.

Those of us who have been urging the appropriations for this bill, of course, were pushing for full funding. We did not quite get full funding, but what we received was most appreciated.

I think that we can give Mr. Yates the credit for bringing this about. So, Mr. Yates, personally I do thank you very much from the bottom of my heart as one Indian citizen in these United States.

Congressman **Yates**. Thank you, Jake. If I may be permitted a reply, Mr. Chairman.

I would like to say that it is the work of the subcommittee and not just the chairman. We have a very enlightened and very responsive group of Members of Congress who happen to be members of the subcommittee which I have the honor to chair.

I think that the credit should also go to them. We think that the best thanks that we can get will be an improvement in the health of the Indian people because right now, as a group and as a people, the amount of health care that they have received is reflected in the condition of their health.

It is woefully behind the rest of the American people. I know that I speak for the other members of my subcommittee in saying that we propose to do everything we can to take care of that deficiency.

Thank you very much. And you did deliver it just as I wrote it.

Mr. **Richtman**. The next chapter is chapter 8. We were about to start that. Chapter 8 in the tentative draft was titled "Social Services." We have changed the title to "Community Services," with the thought that that was more encompassing the material that is in this chapter.

The editorial changes in this chapter also are very minor. Some of the sections were reorganized so they would flow more logically. Also, some of the material that was in this chapter has been eliminated because it appears elsewhere in the report in the other chapters. We have also gone through this chapter and changed a lot of the titles of various sections and subsections. The original version which was in the tentative draft divided the chapter into four sections: Welfare, child placement, health, and education. In this version we have placed health first. Education is the second section and we have combined welfare and child placement.

Actually, we have incorporated child placement into welfare thinking that it was not significant enough to be an entire section.

However, all of the material which was in the child placement section is now a subsection of welfare. In some cases—and we will get to this in a few minutes—recommendations were combined or condensed. That was done to clarify the recommendations.

In a couple of instances there are some new recommendations and when we get to the recommendation section in this discussion, the Commission will have to act on those recommendations. These are recommendations which did not appear in the previous draft voted on by the Commissioners.

Within the health section, as far as technical changes are concerned, two sections of the tentative draft were removed in revising and editing this chapter. Those were the section on environment and the section on employment.

Each of those subsections on health duplicate the material that was already in what is now chapter 2, "Contempory Conditions," which was called demographics in the previous draft.

It was essentially the same material in the narrative so it was eliminated from those chapters. As I said, a number of the subtitles have been changed with the hope that they would be more interesting to the readers of this report.

For example, I note this is the discussion on the subsection of the draft called, historical background, is now referred to as "a balance upset." We have also taken some of the jargon out of the title of this chapter. Where, for example, we refer to the IHS consumer, we now refer to as the IHS patient.

We thought that that would read a lot better than in the previous draft. Major substantive change in the health section dealt with housing.

We talked with Commissioner Bruce, in the last 30 days comment period, about this area. It has been expanded quite a bit. In the narrative on the housing section, we now have statistics as to the numbers of housing units on reservations which are less than standard, numbers of housing units which require renovation or replacement.

Also, in this revised housing section the narrative outlines problems of housing as they relate to regional and cultural variations in different areas of the country where Indian people live and discuss the inability of HUD programs to adapt to these changes and indicate the fact that HUD programs are not flexible enough to adapt to these cultural and regional differences.

There is a new recommendation in this section on housing which the Commission has not acted upon prior to this meeting. The only other subsections in the health section which are at all altered deal with nutrition and the health care improvement act.

In each case, the material that was in the previous draft is reproduced in its entirety. Some of it has simply been condensed and some points have been summarized because the staff felt that the lengthy discussions on those two areas were unnecessary and served no useful purpose.

Getting to the recommendations in the health section, as we did with all of the other chapters for purposes of consistency, we have taken the findings out of the chapter as they appear in previous versions of this chapter because these findings were repetitive. They appear throughout the text and the narrative of the health section.

We have also recorded the recommendations in the previous draft, general recommendations came last and the staff thought it was more logical to have the general recommendations appear first.

Under facilities—all of the recommendations in the previous draft are in this draft. We have combined the first two recommendations and we have combined a third and a fourth since there were four recommendations in the facilities. There are now two, including all of the material that was in the previous draft.

The same process was undertaken with recommendations under staffing. We combined the first and second recommendations and we combined the fourth and fifth recommendations. This whole chapter, the staff feels, reads much better and quicker because of this consolidation of the recommendations.

I want to point out an error in the report. The recommendation listed under environment—if you read it, you will note that that is not the correct placement of that recommendation, it was a typographical error—that recommendation is the second recommendation under the budget subsection on health.

Commissioner **Deer.** What page is that on?

Mr. **Richtman.** Page 47; the recommendation under environment should be the second recommendation under budget. There is no environment section.

Now, the recommendation under housing is a new recommendation. It is on page 8–48. That recommendation requires Commission action.

Commissioner **Dial.** Are you finished?

Mr. **Richtman.** I think that we have to have a vote on this recommendation. Perhaps we should wait until the chairman and vice chairman return for that vote.

Commissioner **Dial.** Who is acting as chairman?

Congressman **Yates.** Mr. Bruce.

Commissioner **Bruce.** Yes.

Commisioner **Dial.** On page 8–1, third paragraph, "Indians are substantially less educated than the general population" and so forth—I wonder if you don't want to say "Indians receive less formal education" or change it some other way than saying "Indians are substantially less educated"? I don't feel that they are substantially less educated, but when it comes to formal training, yes. Do you see my point?

Mr. **Richtman.** Yes. What we are referring to is number of years of formal education.

Commisioner **Dial.** I know. But you are not saying that. I want you to say it.

Mr. **Richtman.** How would you say that?

Commissioner **Dial.** You say, "Indians receive less formal education than the general population."

Congressman **Yates.** Do you want to say that or do you want to say the opportunities for education are less?

Commissioner **Dial.** Well, you can say that the opportunity is less.

Congressman **Yates.** Indians receive less opportunity for education.

Commissioner **Dial.** But I don't like saying they are substantially less educated.

Congressman **Yates.** I agree with you, but what I am offering is a suggestion.

Commissioner **Dial.** Fine.

Congressman **Yates.** The question is on schools and facilities that are available. I agree with you. We just put $1 million in our bill for degrees for Indians.

Mr. **Richtman.** If we have the consensus of the Commission, we can change that to "Indians receive less opportunity for formal education."

Commissioner Dial. OK, that is fine, I accept that.

Mr. Richtman. Is that in agreement?

Commissioner Dial. Very good.

Mr. Richtman. We can return to the housing recommendation——

Commissioner Bruce. That is on 8–7 or 8–40?

Mr. Richtman. Page 8–7.

Commissioner Bruce. The housing recommendation.

Mr. Richtman. The housing recommendation is on page 8–48 of this chapter. We could discuss that at this point.

Commissioner Whitecrow. I would like to have some discussion on that from the rest of the Commissioners here in regard to eligibility of an Indian away from the reservation and away from his tribal area insofar as applying for Indian housing.

Mr. Bruce, would you mind elaborating on that? You are quite involved in housing programs.

We recognize the Commission recommended here that Congress reorganize the Indian housing program. You give one agency the primary responsibility for coordinating and administering the program. This falls in line with our other recommendations insofar as creating one separate agency.

But how, then, would we go about an application process for an Indian who lives in Chicago or New York for a house under the Indian Housing Act?

Would that be possible in this consideration?

Commissioner Bruce. I would think so. Max, would you think that that was true?

Mr. Richtman. I think that goes to the discussion between Alan and the Commission, particularly Congressman Yates, this morning.

Mr. Parker. I am sorry. I wasn't following.

Mr. Richtman. We are talking about eligibility of an Indian living in New York or Chicago for this kind of a housing program.

Commissioner Whitecrow. How would we bring about the delivery of Indian housing to an Indian who lives in Chicago through one Indian agency here having responsibility for housing.

Mr. Parker. So your question goes to the administrative structure for delivering that service?

Commissioner Whitecrow. Should we not make some recommendation in regard to how this administrative process might be developed?

Mr. Parker. I think that we might be anticipating something which will come out in chapter 6 on Federal administration which evidently is not in front of us right now. They look at the whole problem of services being administered across the board by different agencies in the Federal Government and emphasize the lack of coordination and details.

I don't know that they come to the conclusion that any specific service should be consolidated in one single agency.

Mr. Richtman. Commissioner, in addition to what Alan has just said, in chapter 9, which we will get to later in the day on off-reservation Indians, there is a housing recommendation which directs the executive branch, particularly the Bureau of Indian Affairs, to reestablish a program formally funded providing equity grants for downpayments to urban Indians who have lived in particular cities for more than 2 years.

Commissioner Whitecrow. I am sorry, Max, I don't have that chapter.

Mr. Richtman. Chapter 9. Do you have chapter 8?

Commissioner Whitecrow. I have chapter 8, but no chapter 9.

Mr. Richtman. We sent chapters 9 and 12 in the mail. At any rate, that recommendation, I think, deals with the question that you raise.

Commissioner Dial. Max, where are you reading in chapter 9?

Mr. Richtman. That is on page 24 of chapter 9.

Commissioner Whitecrow. Max, I might also say I don't have chapters 6 or 7.

Mr. Richtman. Those won't be ready until after today. They are being typed and copied.

Commissioner Dial. I am sorry. I don't have chapter 9, either.

Mr. Richtman. I think 9 is coming over. Someone is bringing them.

Commissioner Dial. Max, wouldn't there be a difference between, say, a loan for Indians where the Government was involved in building houses on the reservation—I can see where the Government may decide to erect, say, 100 homes on the Navajo reservation which would not be the same as if you were going to provide urban housing, say, in the city of Chicago.

On the other hand, I can see through economic development, if they were making loans, where you could make a loan for an Indian who owns a home in Chicago. I think that that is the only way that you could ever do it.

Mr. Richtman. That is what this recommendation addresses itself to.

Commissioner Dial. I don't feel that we should go around building a house for every Indian in the country regardless of where he lives. It would be such a big problem that you could never deal with it. But the Government could make money available to the Indian individual to build a house or something similar to a low-rent home and so forth.

Mr. Richtman. The section in chapter 9, besides supplying these equity grants or loans, calls for grants for initial moving costs, and supports housing improvements through the executive branch.

Commissioner Dial. I feel that as a so-called nonfederally recognized Indian that I would never receive every benefit that reservation Indians receive since I don't live on a reservation. I think it is impossible, but I do feel that benefits need to be extended to nonfederally recognized tribes or off-reservation, not only near reservations, but to Indians—period.

I don't see how those benefits would always equal the same as the reservation Indians, not in every respect. You know, it comes to providing schools and so forth. I can see where they can appropriate money for Indians in an Indian area as they do now in Indian education, title IV.

I think if we try to mix the two of them up all the way through—that is where we were this morning, where we were confused. We took a couple of hours on that topic and I believe when we tried to discuss all benefits to all Indians, on reservations and off reservations, that somewhere along the line Congress will have to make a distinction because the people who are off the reservation are looking for the same benefits.

Where I live—with 50,000 Lummis—we are not looking for the Federal Government to come in and build roads as the people would on the reservation or to approve their timber and cut the timber and so forth.

I think that we have to think of it in that light.

Mr. Richtman. This particular recommendation under housing addresses only the question of how housing programs and services are to be delivered to Indian people. It does not go into the other things.

Commissioner Dial. I was carrying it a little further.

Mr. Richtman. I might add that there is a bill that has been introduced in the Senate that would transfer all Indian housing programs to HUD under an assistant secretary. That legislation would not be inconsistent with our recommendation which would like to see all these programs in a single agency, and upon establishment of a consolidated Indian agency, all of the housing programs, as well as all programs involving Indian people, would then be transferred to that agency.

Commissioner Dial. How would you view an Indian off the reservation, say, off a Navajo Reservation, living in the city of Chicago with one who is not off the reservation, who is a nonfederally recognized Indian living in the city of Chicago?

Would they be in the same boat or would this Indian off the Navajo Reservation need to return to his reservation to acquire that home? What would you say about that?

Mr. Richtman. The housing issues that we are talking about now don't make that kind of distinction. I think that in the discussion much earlier today, it seems to me that there is a distinction between those two types of individuals as far as eligibility for housing in an urban area.

Commissioner Dial. But then when you come to chapter 11, dealing with nonfederally recognized tribes, what does that do then in the way of housing?

Mr. Richtman. Alan, could you refer to that chapter?

Mr. Parker. Let me restate what I think you are saying. If we have a nonfederally recognized tribe, and under chapter 11 the recommendation calls for a mechanism for tribes to achieve recognition through a procedure that spells out establishing proofs and so on that once they are recognized, then there is your question: Does Indian housing become a service to that newly recognized tribe?

Commissioner Dial. I can't see housing for the reservation and housing for off-reservation as being exactly the same because the mechanism that is provided for, say, housing on the reservation would not allow off the reservation.

It would have to be some kind of grant or loan or something or other because I can't see the trust responsibility being exactly the same off the reservation as on the reservation, but I can see how the Federal Government would aid people off the reservation, but it would have to be through a different mechanism.

That is what I am trying to say. As all of you know, I live off the reservation. I am a member of a nonfederally recognized tribe, a term that we hope to ditch some of these days.

I don't know that I am coming through and this is one of the big things that you have to consider. What would happen to housing, comparatively speaking, for someone who left the reservation and then lived in the city of Chicago or someone who had never been on a reservation?

Mr. Parker. I think that the theories that we were developing this morning would lead to the conclusion that housing, as an example, would not necessarily be a trust responsibility for off-reservation residents. It would be consistent with the theory that was propounded that if an individual Indian in an urban area had no available means of securing housing, he just simply lacked it, he wasn't eligible for whatever housing programs may have otherwise been available to residents of that urban area, that the Federal Government would be more than within its rights in providing services in any number of ways to that individual supplementing State programs, or supplementing special programs.

Commissioner Dial. Yes; I agree with that.

Mr. Parker. So I think that it would be unwise to try to tie it down and say exactly how that would work. So the bit in the question is to try to follow up the logical extension of the theory. But as I understood, where our discussion left this morning, that the actual recommendations in the trust section simply establish a common principle that trust doesn't stop at the reservation line and social service is within the scope of the trust. Now, exactly how that applies to a specific service and a specific individual is not answered.

Commissioner Dial. Then would you say that trust responsibility doesn't stop on the reservation, but off the reservation it may vary?

Mr. Parker. Yes; I would say that that is a good way of putting it.

Commissioner Bruce. Max, do we have to vote on each one of these recommendations?

Mr. Richtman. No; the Commission has to vote on the housing recommendation which appears on page 48. Right now we don't have a quorum. We can go on with this chapter to the two other sections which are very brief and come back and vote on this recommendation and another recommendation which has been dropped from the education section.

If there is no further discussion, we could continue with the education section.

Commissioner Bruce. We had talked about the urban centers and that is a specific recommendation. Here on 9-23 ——

Mr. Richtman. No; that chapter will be dealt with next. There are some housing recommendations in here as well and we will take that up after we finish this chapter.

Commissioner Bruce. OK, do you want to go ahead?

Mr. Richtman. The education section of chapter 8 has been modified very slightly in terms of organization and editing. We were pretty faithful to the original version in the tentative draft. The editorial changes for the most part involved checking out citations, footnotes, other references and material that appeared at the end of the chapter and moving that back to the beginning of the chapter.

All of the recommendations that appeared in the tentative draft are in this section of the draft, except for the second recommendation in the tentative draft which has been eliminated. That recommendation called for a training program for Indian teachers and administrators.

We discovered during this comment period that this program was already provided in the Bureau of Indian Affairs and felt that there was no need to put in a recommendation, which was already superfluous, as those programs already exist.

The order has been changed on several of the other recommendations. The recommendations are the same and are discussed in the same way as they were in the previous draft.

Commissioner BRUCE. The off-reservation boarding school recommendations have been reorganized and is that how they have been reorganized?

Mr. RICHTMAN. No; the only difference is the way that they are listed. All of the words that appeared in the previous recommendations on off-reservation boarding schools are in this section of chapter 8. They have just been laid out in a different way.

The words themselves are all there and there have been no changes. The welfare section, which is the last section of this chapter, appeared first in chapter 8 in the tentative draft.

The findings in this chapter have been eliminated and incorporated into the text of the welfare section. Also, the first two recommendations have been combined. The original recommendation, No. 4, in the tentative draft stated the recommendation in the form of a principle and the staff, after reviewing some of the comments, thought that it would be more responsible to state that recommendation in the form of a directive rather than a principle.

The recommendation now directs the BIA and HEW to promulgate regulations that would insure that Indian trust land and money not be considered to be an asset in complying with eligibility for welfare programs. That recommendation is the same recommendation that has been changed, as I said, from stating the principle to stating a directive to those agencies.

The other recommendations that are new in this chapter involve the child placement section. The discussion of child placement and the recommendations included in that discussion in this chapter are much more specific. They clarify the relationship between the tribes and the jurisdiction the tribes have over the custody of children who live on the reservation and also raise the issue of how much tribal input there should be with respect to children who do not reside on the reservation.

Full recommendations in this section appear on pages 96 and 97. These recommendations are new and have not been acted on by the Commission.

We could discuss these and vote on them when the other Commissioners return or we could wait for the discussion, whatever the Commission decides.

Commissioner BRUCE. Any discussion?

Commissioner WHITECROW. Mr. Chairman, I would recommend that we recess until the return of the rest of the Commissioners so that we don't have to duplicate our work upon their return.

Very definitely, as it stands now, you could rest assured that they will require additional conversation and discussion. Therefore, I would recommend that we now recess until their return.

Commissioner **Dial**. Jake, why don't you take up some of the housekeeping business while they are gone?

Commissioner **Bruce**. Because they need to be here, too.

Commisioner **Whitecrow**. They need to be here for that, also.

Commissioner **Bruce**. We will stand in recess until they return.

[Brief recess.]

Chairman **Abourezk**. We are back in order.

Where are we now?

Mr. **Taylor**. Mr. Chairman, we are ready to deal with the problems of child placement.

Chairman **Abourezk**. Can you give us a page number?

Mr. **Taylor**. Page 8–96. But Max says we may need a vote on housing. I am sorry. I am just getting here myself.

Chairman **Abourezk**. Was there a change in the housing section?

Mr. **Richtman**. We have a new recommendation on housing the Commission has never acted on.

Chairman **Abourezk**. Have you discussed it?

Commissioner **Bruce**. Yes.

Chairman **Abourezk**. All right, we have a quorum present.

Mr. **Richtman**. It is on page 8–48.

Chairman **Abourezk**. Has there been sufficient discussion on this part?

Commissioner **Bruce**. Yes; we have had discussion.

Chairman **Abourezk**. Is there objection to the recommendations on housing on page 8–48? If not, those changes are agreed to.

All right.

Mr. **Taylor**. We are ready now for the section on child placement.

Chairman **Abourezk**. What are the changes that are involved there?

Mr. **Taylor**. We have changed our recommendations in the version that we have now. We have shortened the recommendations considerably to three items. Item A would recognize that Indian tribes have exclusive jurisdiction over the custody of an Indian child living on a reservation.

Part B would provide that where an Indian child lives off reservation and is subject to the jurisdiction of non-Indian authorities, the child's tribe of origin should be notified before any action affecting the child's custody is taken.

Part C simply indicates that non-Indian social service agencies should be required to provide training in Indian culture and traditions to their staff to sensitize them to the Indian people.

Frankly, in comparing it to our earlier recommendations, I feel that we have weakened what we had before and I would like to make a recommendation that we go back to the recommendations that we had in the earlier version.

If I could read those, I would be happy to do so.

Chairman **Abourezk**. We already passed on the earlier ones, didn't we?

Mr. **Taylor**. Yes; I think that we did.

Chairman **Abourezk**. Then why discuss them?

Mr. **Taylor**. Could we simply make that substitution then?

Chairman **Abourezk**. If it is agreeable to the Commission; yes.

Mr. **Taylor**. In fact, Mr. Chairman, I think our earlier recommendations actually detract from legislation that is pending.

Commissioner **Whitecrow**. Why did we change those recommendations in this report here? We already voted on the other recommendations. Why are these changed?

Mr. **Taylor**. I can't explain that. I was not involved in that.

Chairman **Abourezk**. Whoever added to the report made the changes.

Mr. **Taylor**. Right.

Chairman **Abourezk**. So, without objection, we will just stay with the original recommendations.

Next section.

I just thought that I might advise all non-Government people that is how we make our living here is making things more complicated than they ought to be.

Mr. **Taylor**. Mr. Chairman, I think that we are ready to move on to chapter 9.

Chairman **Abourezk**. All right. Would you discuss the changes that have been made on chapter 9 and what we have passed on before?

Mr. **Taylor**. I am sorry. I meant to skip to chapter 10. Another person is going to cover chapter 9.

Chairman **Abourezk**. All right; move to chapter 10.

Mr. **Taylor**. This is the chapter on terminated Indians.

Chairman **Abourezk**. Would you discuss the changes in chapter 10?

Mr. **Taylor**. The recommendations in this chapter remain unchanged from those that were in the tentative draft.

Chairman **Abourezk**. Are there any other substantive changes?

Mr. **Taylor**. The only other substantive changes in those recommendations is that there is a discussion of a restoration process. There was a criticism received that there was not sufficient clarity in the process.

We reviewed the recommendations that we had. We felt that they were adequate. So we simply added a little discussion that would not change the recommendations.

Chairman **Abourezk**. Any objection to adding that discussion?

If not, let's move on to the next section.

Mr. **Taylor**. All right. I can take us into tomorrow's session.

Chairman **Abourezk**. That is fine. We are going to try to finish everything today if we can.

Mr. **Taylor**. That would take us into chapter 11 which deals with unrecognized Indians.

Chairman **Abourezk**. I would like to try to finish all of the sections today but put off a final vote on the report until tomorrow so that we can notify everybody at the time of the vote.

Lloyd and Sid are gone and I think that they ought to be here for the vote.

Commissioner **Dial**. Right.

Mr. **Taylor**. Mr. Chairman, this is a chapter in which we had to take a final vote in our deliberative processes. The recommendations have not been changed and there has been minor textual corrections.

Chairman **Abourezk**. Textual deviations?

Commissioner **Dial**. I read every word of this chapter and I find no major changes. There are really no changes in content.

Chairman **Abourezk**. If there are no objections to the changes made, we will pass that and pass on to the next section.

Mr. **Taylor**. The next section is chapter 12, which deals with special circumstances. That is, Alaska, Oklahoma, and California.

We probably received more comment on Alaska than any other single subject, almost all of it was favorable. We did have one adverse criticism which went to the question of governmental status of the Tlingit-Haida Central Council.

That criticism came from the Native American Rights Fund. As we view it, their concern dealt with the possibility of funding to subgovernmental areas. The villages might be affected through congressional recognition of the central council as the governing body.

We received a great deal of support for our position on the Tlingit-Haida Central Council and Commissioner Borbridge had individual remarks that he submitted on this issue. We reviewed our submission of this. We feel that the way that it was handled was correct and the position of the Commission is correct.

So we have left our recommendations intact, just as they were. We added a note at page 12–19 that refers to the NARF criticism, that we reviewed the material and why we have left it the way that it is.

Chairman **ABOUREZK.** In other words, you have made no changes and you have noted the criticism?

Mr. **TAYLOR.** That is correct.

Chairman **ABOUREZK.** We may as well pass on to the next section, then.

Mr. **TAYLOR.** The next section is Oklahoma.

Commissioner **BORBRIDGE.** Mr. Chairman, if I may, as you recall I had submitted to the Commission for consideration for inclusion into the final report a paragraph pertaining to the cost of living and of doing business in Alaska.

Both proposed texts have apparently been made available to the Commissioners. In light of the changes in the original draft, I am not certain as to which page number these would fall on. But I certainly announce my intention, tomorrow, to formally move for its inclusion. So that will be the only change that I would urge be considered tomorrow when we vote, Mr. Chairman.

Chairman **ABOUREZK.** Do you want to move it now?

Commissioner **BORBRIDGE.** Yes. I would like to move for inclusion of the language which is contained in the material in the hands of each of the Commissioners.

Chairman **ABOUREZK.** Are there any questions on the adoption of that language?

If not, all those in favor of adopting the Borbridge language in that section, raise your right hand.

[Show of hands.]

Chairman **ABOUREZK.** Those opposed?

There are six "ayes" and no "noes."

Mr. **TAYLOR.** The next major segment of this chapter is Oklahoma. We have done an additional editing job on the Oklahoma section. One of the criticisms leveled was that it was a somewhat emotional treatment. We reviewed it and felt that perhaps it was and we softened it a little bit, but we did not change any of the text material in terms of what it was saying and where it was going.

There was also one criticism of the juxtaposition of a couple of statutes. Commissioner Whitecrow, you were particularly sensitive to this. We had two statutes dealing with eastern Oklahoma in a section that was discussing jurisdiction in western Oklahoma and the two areas are very different from each other, so we corrected that legal problem.

The recommendations in this section, again, remain as they were the last time we voted with one minor editorial change. One of the criticisms received from Native American Rights Fund indicated that the language we used tended to preclude possible legal arguments to the effect that the governmental status of tribes in western Oklahoma still remained intact.

We do not want to preclude any such arguments that might be made, so there was a minor change in wording to avoid prejudicing any legal case that might be made with the recommendations.

Commissioner WHITECROW. Where is that?

Mr. TAYLOR. It is on page 12–96.

Commissioner. I would say that whole central paragraph on page 12–76 is designed to make clear that our recommendations in this section are not intended to preclude any possible arguments that the western Oklahoma tribes may have.

In fact, I believe at present that they are undertaking a joint jurisdictional study among the united tribes of western Oklahoma. So we note that, also.

Commissioner WHITECROW. I have no problem with that.

Chairman ABOUREZK. OK, we will take up the next section.

Mr. TAYLOR. The third section is on California.

We received considerable support for our section on California. However, there appeared to be some need for editorial changes. So it has been rewritten but, basically, along the lines that it was before.

The Indian people in California are supportive of this section and State agencies have also expressed their support for it. Essentially, the problem in California is a question of equitable allocation of Bureau of Indian Affairs and Indian Health Service moneys among the Indian service area population.

It appears that California, if you go strictly on the population basis, would have roughly 6.7 percent of the entire Indian service population. Their allocations over the past 7 years have ranged anywhere from around two-tenths of 1 percent to about 2.8 percent.

So, if it were examined strictly on a population basis there is a question about the fairness of the funds they are receiving. So we have some new recommendations that require some Commission action. They appear on pages 12–110 and 111. They direct the Bureau of Indian Affairs to review their past allocation of funds among the different areas to determine equivalency and equitableness.

They direct the Bureau that, in determining budgets for the California Indians, they should not base their budgetary projections on past actions that were unfair in the amount of money allocated.

This is a budget system followed by BIA and we are directing them to abandon that, at least until an equitable adjustment has been made.

We make a similar recommendation to the Indian Health Service. There is a fourth recommendation: We say that Congress should require both the Bureau of Indian Affairs and the Indian Health Service to report their findings regarding past inequities and fund allocations among the different service areas and require each agency to specify the procedure it will follow in future budget developments to avoid repetition of these occurrences.

So, essentially, the recommendations are directed to the agencies to review the situation and report back to Congress. Those recommendations require a Commission vote.

Chairman Abourezk. All right. Is there any objection to the California recommendations?

If not, those are agreed to.

Mr. Taylor. Thank you. That brings us to chapter 13, it is the last one. Max Richtman will handle this last chapter.

Chairman Abourezk. Before you start, I want to acknowledge the presence of the chairman of the Cheyenne River Sioux Tribe in South Dakota, Wayne Ducheneaux. He is related to Frank Ducheneaux.

Go ahead, Max.

Mr. Richtman. Chapter 13, general problems. There is only one change in that chapter from the previous chapter 13. That is the addition of one section which we call, in the table of contents, cultural issues. That is pages 13–1 through 13–8.

The recommendations that are included in this new section, under general problems, were included by the staff and are designed to strengthen and enhance Indian culture. The recommendations appear on pages 7 and 8 and these are new recommendations that require a vote by the Commission.

Other than these recommendations, the chapter appears as it did before in the tentative draft.

Other than these recommendations, the chapter appears as it did tions about the changes?

If not, they will be agreed to without objection.

Does everybody have a copy of page 5–78?

These were the recommendations. The language merely has been rewritten without a substantive change.

Mr. Taylor. That is true, Mr. Chairman. We have not yet adopted these recommendations. We have to have a vote on this.

Chairman Abourezk. All those in favor of adopting these recommendations, raise your right hand.

[Show of hands.]

Chairman Abourezk. Those opposed?

The vote is six to nothing in favor of adoption.

Next section.

Mr. Taylor. Mr. Chairman, I think that that finishes everything except chapters 6, 7, and 9.

If we can take a short recess, we can get chapter 9 here.

Chairman Abourezk. What about chapters 6 and 7?

Mr. Stevens. They are right behind chapter 9.

Chairman Abourezk. They are not here?

Mr. Stevens. Six will be here in about an hour. They just started copying it.

Chairman Abourezk. What about chapter 7?

Mr. Stevens. I don't know. I could find out.

Chairman Abourezk. Is chapter 7 here?

Mr. Richtman. It will be here. It is not here now. If we could have a recess for about 30 minutes.

Chairman **Abourezk**. Who doesn't have chapter 9?

[Show of hands.]

Chairman **Abourezk**. All right. Why don't we just recess until tomorrow morning then rather than make everybody wait for an hour and then come back?

Mr. **Richtman**. Mr. Chairman, chapter 9 should be here in a couple of minutes.

Chairman **Abourezk**. All right. Then we will wait for that.

Commissioner **Whitecrow**. In the meantime, Mr. Chairman, there is a matter of administrative business that we should take care of here. That is, the matter of reimbursement for travel and per diem. Also, salary for the Commissioners.

I know, from a personal standpoint, I have not received reimbursement for my travel and per diem since January and the Commission still owes me for January, February, March, and April. I am quite concerned about this and so are my creditors.

Chairman **Abourezk**. Let me ask the comptroller general, Max Richtman.

Mr. **Richtman**. The delays in processing these vouchers are a product of the delay in getting the supplemental appropriation passed and signed by the President.

We had thought that the Senate would take up the legislative appropriations supplemental bill before the Easter recess. As it turned out, it was not voted on by the Senate until after the recess.

The President signed that bill about 6 or 7 days ago. After he signed it, it took 2 to 3 days for a warrant to be issued from the Treasury Department to the Senate Finance Office. That money is now in our account. All the vouchers that you referred to, Commissioner, were processed by our office some time ago and are in the Senate Disbursing Office.

They started paying, as of 2 days ago, all of these vouchers. Until the time that the $100,000 is available to the Commission, they processed the vouchers but didn't pay them. So I would expect that you should receive payment for all expenses and all salary claims within the next week.

Commissioner **Whitecrow**. That is fine. I am happy that that will transpire. However, I am concerned that our last financial statement indicated that we are going to be considerably in the red for some line items.

I am wondering whether or not we have sufficient money to pay for this specific meeting inasmuch as we are all in here until next Tuesday.

Mr. **Richtman**. We can pay for this meeting.

Chairman **Abourezk**. We aren't going to be short on money then, Max: is that right?

Mr. **Richtman**. We are going to be very close.

Chairman **Abourezk**. But we had better not be short; right?

Mr. **Richtman**. That is right.

Chairman **Abourezk**. Off the record.

[Brief recess.]

Chairman **Abourezk**. On the record.

There has been a unanimous consent request by Commissioner Lloyd Meeds that he be allowed—did Sid leave?

Commissioner **Bruce**. Yes.

Chairman **Abourezk**. That he be allowed to offer a surrebuttal to whatever my separate views might be prior to the time that the report goes to the printers.

Now, we had better set some kind of a date on that, too. When do you want to send it to the printers, Max?

Mr. **Richtman**. We would like to send it to the printer by the end of May.

Chairman **Abourezk**. By the end of May?

Mr. **Richtman**. It will take about a month to get it printed.

Chairman **Abourezk**. What day in May are you sending it to the printers?

Mr. **Richtman**. Whatever date we set—May 30.

Chairman **Abourezk**. All right. That will be sufficient time.

Congressman **Meeds**. As long I have the rebuttal by the 17th.

Chairman **Abourezk**. The final deadline on any separate views will be May 30. Is there objection to that request?

Without objection, that is so ordered.

We are now adjourned until 10 o'clock tomorrow morning when we will meet in room S. 208 of the Capitol Building—the majority leader's office.

[Whereupon, at 3:50 p.m., the meeting was recessed, to be reconvened the following day at 10 a.m., May 13, 1977, in room S. 208 of the Capitol.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

FRIDAY, MAY 13, 1977

AMERICAN INDIAN POLICY REVIEW COMMISSION,
Washington, D.C.

The Commission met, pursuant to recess, at 10:34 a.m., in room S. 208 the Capitol Building, Senator James Abourezk (chairman of the Commission) presiding.

Present: Senator James Abourezk, chairman; Congressmen Lloyd Meeds and Sidney R. Yates; and Commissioners Louis R. Bruce, Adolph Dial, Jake Whitecrow, Ada Deer, and John Borbridge.

Staff present: Ernest L. Stevens, staff director; Alan Parker; Max Richtman; Peter Taylor; Tony Strong, and Chuck Downs.

Chairman ABOUREZK. The American Indian Policy Review Commission will come to order.

We have three chapters remaining. Is chapter 9 first?

Mr. DOWNS. Nine is first.

Chairman ABOUREZK. All right.

Would you introduce yourself, please?

Mr. DOWNS. My name is Chuck Downs. I started working for the Commission in October.

Congressman MEEDS. Could I interrupt for a moment to make an observation?

Chairman ABOUREZK. Yes.

Congressman MEEDS. I certainly know what it is to be a minority now, since being on this American Indian Policy Review Commission, and I have a whole lot less to do within the Commission now than I had before, and I appreciate the usual customary courtesy.

[Laughter.]

Chairman ABOUREZK. I was very happy to provide a final solution to Lloyd Meeds' problem.

[Laughter.]

Chairman ABOUREZK. Turn off his mike.

[Laughter.]

Chairman ABOUREZK. All right, we are back on chapter 9.

Mr. DOWNS. On chapter 9: There have been very few changes made in the copy which you have before you.

Chairman ABOUREZK. Have any substantive changes been made in chapter 9?

Mr. DOWNS. There was a deletion of a case citation, which was considered in the situation, but it did not change the context or affect any part of the text.

There was one recommendation that was unclear. It was criticized as being internally conflicting and that recommendation was deleted. The recommendations are clear now.

Chairman **Abourezk**. Is that the extent of the substantive changes?

Mr. **Downs**. It is. Most of the changes in this chapter were changes in the historical overview section and an emphasis on urban centers was added, which I think is a substantive addition.

Chairman **Abourezk**. What do you say about urban centers?

Mr. **Downs**. There is more discussion of the development and of the type of institutions that urban centers are, what types of services they can provide, and why they provide those services.

Chairman **Abourezk**. Were there any changes in the recommendations?

Mr. **Downs**. There was one recommendation which was very confusing in the tentative draft and that recommendation was deleted from this copy.

Chairman **Abourezk**. Any discussions on chapter 9?

Congressman **Meeds**. I am sorry, I didn't understand you.

Mr. **Downs**. I wish I had a copy of the original. Do we have the tentative version of that recommendation? This was a very confusingly worded recommendation that seemed to lead nowhere, and so we dropped it.

Congressman **Meeds**. It was replaced by what?

Chairman **Abourezk**. Did you replace it with anything?

Mr. **Downs**. It was not replaced. It was just deleted, as I understand.

Congressman **Meeds**. What did it provide?

Mr. **Parker**. The substance of the recommendation, which is referred to in the booklet which identifies changes——

Congressman **Meeds**. On what page?

Mr. **Parker**. Chapter 9, item No. 6. It calls for delivery of service funds to urban Indian centers through the tribal government. The mechanism was never quite defined, but the concept was that certain funds which went to the tribe could be distributed through the tribe to urban centers to the extent that those funds could be identified as being accruing to the individual—such as education services and health services.

There are two reasons why: (1) it was not a carefully formulated recommendation, essentially it is not sensible; and (2) those services, such as education services and health services, under present law are being administered directly to the individual. On rethinking, we saw nothing was added by that recommendation.

Mr. **Bruce**. Mr. Chairman.

Chairman **Abourezk**. Louis.

Commissioner **Bruce**. I would like to speak to that point. But, first, I would like to introduce you to the new president of the National Union Urban Council. The president of that council is here with us today—Mr. Gregg Frazier.

Mr. **Frazier**. Good morning.

Chairman **Abourezk**. Good morning. Welcome.

Commissioner **Bruce**. I would like to ask Gregg, since he is the new president: How do you feel about the farmers going through the Council and then to the urban centers?

Mr. FRAZIER. The concept is rather unique. The question is one of how you could get an equitable distribution to the urban area based upon the population because the migratories have been recently moving down in the areas?

And, second, it would certainly require acknowledgement of what is important to try. I don't believe that anywhere in the Council meeting did I hear any efforts that would reduce or impact in any way the solvency of the tribe with respect to the urban organization in an attempt to repeat it. Anything that would affect that would be the responsibility of the tribe leader who would probably take a second position to that.

Chairman ABOUREZK. Is there a recommendation in there that the money go through the urban center?

Commissioner BRUCE. Either directly to an urban center or through the tribal council and then to the center. I think Ernie Stevens testified on that and also Commissioner Whitecrow has some feelings about it.

Commissioner WHITECROW. Mr. Chairman, I covered this specific area. A great deal of them were in concurrence with the funds going through the tribe, and a great deal were not in concurrence.

The attitude of the funding agencies—of course, that has been funding directly to the various urban facilities, as they have been submitting their various applications to the fund.

In regard to the relationships the Federal Government has with American Indians, in regard to the attitude of self-retardation of this concept, I think we have already pretty well established this. The obligation is not to these individual Indians, even though the individual was a beneficiary of the trust. The obligation is to the tribe as a result of the treaty relationship or other legal relationships.

Therefore, I assume that the tribe should have direct input into the funding of any organization that receives funds through this Federal-Indian relationship.

If I could just define this amount. It needs a very severe study applied to it, because of the intricate details of funding within the entire structure.

I think I would like to table my particular efforts at this time until we get into chapter 6.

Congressman YATES. May I ask a question about urban Indian centers?

Suppose you have competing centers. Where does the money go? Suppose some of the tribes don't get along and set up their own centers. We have in Chicago, for example, several Indian centers and they are not able to get along with each other. I tried to persuade them to combine so they could be much more effective and I don't think I was able to do it.

There is a recommendation here for help for the Indian centers. How would you channel that help?

Mr. DOWNS. It would be difficult for us to make recommendations directing urban centers to join together. In the discussion—in the text of the chapter—we called for coordination efforts among urban centers to suggest a way that they could establish boards which could——

Congressman YATES. That doesn't really answer the question.

How do you propose to establish Indian centers? How does an Indian center qualify for help? Who determines that an Indian center represents the Indians in the community? How do you determine that?

If you are going to fund that center and provide it with money, don't you want to make sure that that center represents the Indians?

Mr. Parker. Certainly, that would be a Government responsibility to see that the center represents the Indians, to handle the service population.

Congressman **Yates.** You mean you would handle it the way the National Labor Relations Board handles unions, to decide who is the bargaining agent? How do you propose to do it?

Mr. Parker. Well, Commissioner Yates, admittedly, the recommendations do not address that specific problem. In response to your question, I would think that there could be some control on arbitrary exercise of the Government agency's division as to which competing center should receive the funding. But to institute some limitation on the discretion of the officials, to make that kind of decision, I would think we would have to fall back to administrative law—those kinds of limitation on Federal officials—so that there would have to be some justification and some articulation of the standards that are the basis for such decisions.

Congressman **Meeds.** Well, Mr. Chairman, we have urban centers now.

Mr. Parker. The recommendations don't call for establishment, they simply call for Federal support.

Congressman **Meeds.** Yes; for service to the present urban centers.

Mr. Parker. Exactly.

Congressman **Meeds.** And perhaps an expansion of urban centers.

Congressman **Yates.** And what if you had two or three if you don't stop.

Congressman **Meeds.** There is a method for selection of the urban centers that are presently existing.

Congressman **Yates.** What is that?

Congressman **Meeds.** It is usually set up under the CAP program and financed under—what section is this? It comes out of the Department of Health, Education, and Welfare.

Mr. Parker. ONAP—Office of Native American Programs.

Congressman **Meeds.** ONAP—they also become centers for medical services.

Congressman **Yates.** That is not the way it works in Chicago. You have a separate health center than you do for the urban center.

Congressman **Meeds.** Well, that may be.

Congressman **Yates.** Yes; but the point I am making is this: I had representatives of different centers come to my office and say that they are the ones that need the help. And we may say that, "yes, you have these provisions set up in ONAP, and maybe the American Rights Fund, and so forth. but that doesn't help."

The question is: Should there be a procedure recommended whereby the Indians can vote on the question of which center they think ought to represent them?

Congressman **Meeds.** I would agree with the gentleman from Illinois who is suggesting that we recommend a procedure for selecting urban center representations.

Congressman **Yates**. Yes.

Congressman **Meeds**. It is presently being done by the Government.

Congressman **Yates**. That is right. It is a detail that is confronted by an actual factual situation, and something ought to be done in connection with your recommendation.

Chairman **Abourezk**. May I make a suggestion? That we add a recommendation saying that the Federal funding agency funding such urban center, or centers, shall determine the actual representation of such center, or centers, according to membership certified by the Agency.

So, if there are two urban centers they have to have an actual certified membership according to tribe and whether or not they are enrolled Indians off of some reservation.

Congressman **Yates**. Suppose you do have two centers that qualify under those, would you fund them both?

Chairman **Abourezk**. Well, to the extent that you don't duplicate services, yes.

Now say, for example, the Indian Health Service wanted to set up an outpatient clinic. Well, they certainly wouldn't do it in both centers unless you had one on one end of Los Angeles and one at the other end. Maybe they would want to then. But I think that should be left up to the discretion of the Agency as well.

Congressman **Yates**. I thought Alan didn't want to leave it to the discretion of the Agency.

Mr. **Parker**. I was recommending that standards be articulated and there ought to be an opportunity for administrative review of the decision of the Agency.

Chairman **Abourezk**. But I think, as far as the recommendation is concerned, this probably details enough. And when it comes time for legislation then guidelines could be put in there.

Congressman **Yates**. OK.

Chairman **Abourezk**. Is that satisfactory?

Commissioner **Bruce**. Mr. Chairman?

Chairman **Abourezk**. Yes.

Commissioner **Bruce**. May I raise one point?

We have made some specific recommendations here. We are not backing away from these rules. We are talking about the executive branch in the Federal Government making a detailed examination of these programs. Then we are also saying that we would take the grant that provides financial support for Indian centers in urban areas, and then sending over Bureau of Indian Affairs' financial assistance officers and their contracting powers, all these things, even in urban centers like Mr. Yates is in—like Chicago.

I do feel that the Employment Assistance Office of the Bureau of Indian Affairs ought to be the coordinator, but they have not been the coordinator. They have been the problem because they take sides with one organization that is made up of a splinter group or something of this order. I would say to it that if there were two, and they were in a large city, that maybe they both ought to be funded.

We are talking about establishing health care programs around the center. We have made some specific moves, and I think we ought to continue them.

I have looked at this new urban Indian organization, which I have stayed close to. I went up there on Monday at my own expense to observe what they are doing. They, with their regional people, stand out and they ought to be able to help coordinate these activities in the urban field. And so I am encouraged by not only the organization but also by their adjustment to changes. They are improving on the insight in between the centers which is now going on today.

Chairman **Abourezk**. Ada?

Commissioner **Deer**. Mr. Chairman, I just wanted to raise a point that all the people who receive services in the urban centers are not necessarily members. I think this is something you might want to consider in looking at this point in your recommendation about membership. Many more people receive services than actual members do.

Chairman **Abourezk**. But I think to establish how the funding is going to be handled, that the only way to do it is through some kind of membership to determine how many people are being served. Otherwise, there is no way to know.

We are not asking they they charge people to sign up as members. If they just certify that they are a member—an enrolled private member or something of that type.

Commissioner **Deer**. OK.

Chairman **Abourezk**. Are there any other questions or comments?

Commissioner **Borbridge**. Just one other comment, Mr. Chairman. First, I will ask the staff about this recommendation which the staff considers should be deleted because it was somewhat unclear. I would suggest, Mr. Chairman, that these are recommendations that have been voted on previously. Therefore, the record should show that the Commission concurs on the recommendation now.

Chairman **Abourezk**. All right. Without objection, that recommendation that was deleted will be deleted.

Now are there any other comments on the additional recommendation about determining which center, or centers, should be funded? If not, will you add that in?

Mr. **Parker**. Yes, sir.

Chairman **Abourezk**. If not, that recommendation is agreed to. Were any other changes made in this section?

Mr. **Parker**. No, Mr. Chairman.

Chairman **Abourezk**. All right.

Any other questions or comments on this section? If not, is there objection to agreeing on this chapter?

[No response.]

Chairman **Abourezk**. Without objection, this chapter is agreed to.

As long as we are introducing guests, I just want to say that Gregg Frazier has a very distinguished grandfather who has now passed on. But he was a doctor on the Rosebud Indian Reservation back in 1931 when I was born. In fact, his grandfather delivered me.

[Laughter.]

Congressman **Meeds**. You have a memorial cabin there?

[Laughter.]

Chairman **Abourezk**. Only a wreath.

Also I would like to introduce Addie Yates, over here, who is watching Sid's progress with great interest.

And we have another distinguished visitor. Is Maggie Gilbert here?

Unidentified Speaker. No; she is not.

Chairman Abourezk. She missed her chance, but Maggie is visiting today.

All right. What is the next chapter that you are ready to discuss?

Mr. Parker. Chapter 6.

Chairman Abourezk. Chapter 6?

Mr. Parker. Yes, sir.

Chairman Abourezk. All right.

Mr. Stevens. Mr. Chairman, this chapter has not been changed except for casting and reorganization of the chapter. We have reorganized the introduction and at the end of the introduction are four or five precepts for administration. It is on page 8. We arrived at them by taking all the Indian resolutions and positions in the Chicago and San Diego Conferences, all the impact, about that high [indicating], and we reduced their requests into categories. What this is here—if you buy the concept of Indians' control of the community, and so on and so forth, the whole self-determination—is that any one of these precepts could be matched against legislation, statutes, regulations, procedures, or administration and if they failed in any way, they will cause problems. But if they pass, it is a clean self-determination concept, whether it is in management or any other way.

This was arrived at by examining all these resolutions and categorizing them.

So, we are proposing that these are the concepts or precepts that should be used in Indian affairs.

Chairman Abourezk. But you are saying that there are no substantive changes or recommendations that have been made in this chapter?

Mr. Stevens. Yes; I have some small changes on the recommendations.

Chairman Abourezk. All right.

Would you tell us what they are?

Mr. Stevens. There was a little bit of confusion on the BIA management recommendation that we had endorsed previously. So I put in one recommendation: "The Commission recommends that the Secretary of the Interior implement an action plan for the modernization of the Bureau of Indian Affairs in order to change it from a management to a service agency. Such a plan give maximum consideration to the Commission's 'BIA Management Study' proposals."

And then on pages 78 to 81 they are taken right from the management study and summarized in a digest.

Chairman Abourezk. You have included the management study in this chapter?

Mr. Stevens. Yes, sir.

Mr. Downs. A discussion of the management study.

Mr. Stevens. The discussion, and we put the digest of the recommendations in. The only exception that we took was with the management information system. They had a recommendation in there to fully fund the management information system that involved adding spending about $10 million in Albuquerque. And in our view, to oversimply it, is like having the carriage and buying a horse and a new car. The idea is that you can purchase on the open market much better kinds of equipment than we have now and, furthermore, tribes can have access to those types of systems where they can just pick up the telephone. Their equipment is obsolete.

Congressman Meeds. Mr. Chairman, is there a chapter of the changes? It is not in my book and my microphone doesn't have a cord on it either.

[Laughter.]

Mr. Stevens. All of these recommendations are at the end of the chapter. We took the Indian preference recommendations, which had previously taken up two or three pages, and condensed them to three statements. One is: "the executive branch establish an Indian Career Service consistent with statutory provisions, and should be charged with the responsibility of developing the employment standards as required by section 12 of the Indian Reorganization Act of 1934."

Two: "The executive branch propose a plan to implement the provisions of section 12 of the Indian Reorganization Act of 1934 by establishing standards for the hiring of Indians and relaxing the requirements of the Civil Service Commission." And the last is that: Congress amend section 12 of the Indian Reorganization Act "to make the Indian reference provisions applicable to all Federal agencies."

We did add in the text about one page explaining that there were other independent agencies. Where you come to issue on that is you have to decide whether a separate service makes sense today.

A couple of weeks ago we conducted an examination of the other independent agencies in Government, and there are 42 of them, everyone of them works separate for the same reasons that Indian service should be separate, but basically they were very different. We added one page in the narrative explaining that. I have just one other thing. I made a pen change. When we did the independent agency recommendations, we had in there that Congress provide through appropriate legislation. I just noticed this morning that that is inconsistent with the independent agency recommendations.

The task that the Commission had voted or taken was that we were to give the prerogative consensus, and so I changed and recommend that we change that language to "the President submit to Congress an appropriate plan for the removal of all Indian education programs from the Office of Education to a consolidated independent Indian agency." So that would give the prerogative to the executive branch to review that.

Chairman Abourezk. Does anybody have any questions or comments?

If not, is there objection to agreeing to chapter 6. If not, chapter 6 is adopted.

Congressman Meeds. Mr. Chairman, I would just like for the record to show those things that extend to jurisdictions, sovereignties and trusts. Those are the major objections I made in my dissenting opinion. I would like to record it as, voting "no" for those changes that apply without saying it all the time.

Mr. Parker. We deferred to the early chapters on that subject for the most part, except for the statement in the beginning relating to trust responsibility, but we did not elaborate.

Chaiman **Abourezk**. Do you have another chapter now that we have to consider changes on?

Commissioner **Whitecrow**. Mr. Chairman?

Chairman **Abourezk**. Jake.

Commissioner **Whitecrow**. I would like to enter into the record some comments that I have about Federal administration before we leave chapter 6. That is, as I personally knew, the relationships between the Federal Government and the tribes. In the history, the Federal Government has made promises that they would assist these tribes in the building of their areas, developing them from an economical standpoint, developing industry and assisting in the conservation of lands, minerals, water resources, doing all those things insofar as improving the educational concepts and the educational opportunities and improving the health of individual Indians.

In the process of tribal evolution, we have Indians who have relocated from their original reservation areas and original lands as such. Now we have a new problem created whereby we now have Indians residing all over the Nation—the metropolitan areas, urban areas, and what have you.

I personally feel, from the standpoint of a former tribal chairman and knowing how difficult it is to get individual Indian citizens to participate in tribal elections and tribal meetings, whereby Indians reside and live all over the Nation, that the concept in the delivery of services in effect does nothing to really generate a return of the individual Indians to his tribe, granted there are a few Indian people who do have a great concern for their tribe. They express this concern; however, they never express it to their tribal leaders and they never express it to their tribal government.

And they take advantage of these various Federal programs whereever they might be. I would personally like to see, and I supported this administration chapter, but from the standpoint of a taxpayer in this Federal system I would like to see a more efficient delivery system whereby we could be absolutely certain that only those Indian citizens that are members of tribes that have relationships with the Federal Government receive those sevices.

Now, in our report, we provided a method whereby unrecognized and terminated tribes can be recognized, and hopefully this report will bring about a solution to the many definitions of Indian and that the Federal Government will provide those funds that we are recommending here to allow a tribe to blossom, allow a tribal area to develop, and allow the individual Indian citizens of those tribes to begin functioning in a competitive atmosphere, if they so desire, wherever they may be.

I do not feel, from the standpoint of a taxpayer, that we are really reaching the ultimate end of this problem, because I am fearful that we will continue to have individuals receive services who are not eligible to receive services—that have no relationships with the tribes—and that they will continue to receive these services from all of the many programs and projects that are around the United States.

I don't see anything in this report today that specifies that an individual receiving services must show proof of membership in a tribe.

I would like to see that come about before any services are delivered to that individual.

The only way we can have proof of that membership is to have a relationship with the tribe, and I feel that is the most important part of this entire report, and I don't feel that we have reached it. I don't see it anyplace in our report thus far. So I want to enter that into the record, and I will be submitting a sur-report to the sur-reports that are going to be generated. I did want to insert that.

Chairman **Abourezk**. Thank you. Do you have another chapter now? What chapter is it?

Commissioner **Deer**. Mr. Chairman, at this point I would like to have some discussion on the publication of our report.

Chairman **Abourezk**. Could we do the chapter first and then talk about the publication?

Commissioner **Deer**. Certainly.

Chairman **Abourezk**. Are you ready for the other side?

Commissioner **Borbridge**. Yes; if I may ask one question after the vote, Mr. Chairman, but it isn't a change. I just wanted to clarify with the staff that with respect to the problems in Public Law 93-638 implementation, it struck me during the testimony that we concurred that one of the concerns expressed related to the requirement of signoff of various entities in such manner occasionally to interfere with the sovereignity of tribes. At least, this has occurred in Alaska, as I recall. A statement has been made that it has occurred in other areas, but I did not see reference to that as a specific problem. Was it simply because it had not occurred enough times to be considered a problem of sufficient magnitude to note, or what is your recollection?

Mr. **Downs**. My recollection is that this section in this chapter is a condensation of what appears in chapter 5 and that that specific problem was dealt with in chapter 5.

Commissioner **Borbridge**. All right. Do we have a specific reference to that in chapter 5 now?

Mr. **Downs**. We should, perhaps, refer to that at the end of paragraph 2 on page 660.

Commissioner **Borbridge**. That would certainly be sufficient because it certainly does refer to problems in Public Law 93-638 implementation, and that very definitely is a problem. If it has been handled previously, I think by reference that will take care of my concern.

Mr. **Downs**. Great.

Chairman **Abourezk**. I would like to recognize Ada Deer here for her discussion.

Commissioner **Deer**. There has been discussion over the months about the typing and the final appearance of our report. I would like to call on staff for background work that has been done on this. It was our feeling that we would like to have pictures and a report that would be much more readable than our regular Government-styled report.

Mr. **Richtman**. Commissioner, we made considerable efforts to have the kind of report that we talked about last year to be printed by the Government Printing Office and have been unsuccessful thus far. The model report that some of the Commissioners have looked at—the Public Land Law Review Report—does have photographs, colored charts, and graphs.

That was an executive branch report, and the cost of printing that report came out of the appropriations that went to that Commission for their studies. As you know, the cost for printing all of our task force reports and the final Commission report is not part of the money that has been appropriated to this Commission.

It is money that is appropriated to the Government Printing Office. The Joint Committee on Printing is chaired by Senator Cannon, and the Rules Committee, which is also chaired by Senator Cannon, the staff people from those committees have indicated that we cannot get the kind of publication that we talked about.

Congressman **Yates**. Does that mean that they are going to be mimeographed?

Mr. **Richtman**. No; that means they are going to appear just the way the task force reports appear. The way all committee reports appear.

Congressman **Yates**. Green bound, right?

Mr. **Richtman**. Well, I don't know if they will be green, but they will be committee prints.

Chairman **Abourezk**. In this case, red. [Laughter.]

Congressman **Meeds**. Are the task force reports printed?

Mr. **Richtman**. Yes.

Congressman **Meeds**. Are they circulated?

Mr. **Richtman**. Yes; 1,000 copies of each report was sent to the Commission, and we distributed them.

Congressman **Meeds**. Do the Commissioners get them?

Mr. **Richtman**. There are two task force reports I haven't received, Mr. Chairman. I think 9 is one, and we have modified the other.

Congressman **Meeds**. Would you see that I get a whole set, please?

Mr. **Richtman**. Certainly.

Congressman **Yates**. If my memory is correct, there are reports that do have pictures, charts, and graphs.

Mr. **Richtman**. We can have charts and graphs. We can't have color. We wanted to have some colored maps and some colored graphs and charts, but we can't do that. We can have artwork in ink but not in color. As far as photographs, I am familiar with the kinds of photographs that appear in committee prints, and they are very poor quality.

The kind of paper that is used in committee prints is such that you can see the print on the back of the photograph. It wouldn't serve our purpose very much.

Congressman **Yates**. How much will the report cost?

Mr. **Richtman**. I think the task force reports that were about 300 pages long, which I think this would be, the final report cost will be between $1.75 and $2.25 per page from the Government Printing Office.

Congressman **Yates**. 1,000 of them would be substantial then.

Mr. **Richtman**. The chairman introduced a resolution in the Senate which provides 1,500 additional copies of the report for the use of the Commission.

When the report is printed, copies will be available for sale by the Government Printing Office. Copies will be sent to the House Document Room and the Senate Document Room. Copies will also be sent to the library system, which means that the university libraries and public libraries will have copies of the Commission report. That is all the copies normally that are printed.

A Senate resolution was required to provide an additional 1,500 copies for the use of the Commission, and those will be distributed to the Commissioners and anyone that a Commissioner wants a copy sent to.

We will have to put together another mailing list on that.

We also have made arrangements with the Joint Committee on Printing, but we weren't able to get the kind of report we talked about, Commissioner. We will have a hard-bound copy of the report for each Commissioner.

Commissioner **Whitecrow**. Mr. Chairman.

Chairman **Abourezk**. Yes, Jake.

Commissioner **Whitecrow**. What are the possibilities of having a private concern print this report, such as the "Nations Within a Nation" booklet that Mr. Anderson came out with or the "Captive Nations" booklet that we just received?

Something like that is really eye appealing and is put together in a manner that is of readable context. I believe that is what the Commission voted on—to have this kind of readable publication.

What are the hangups or what is the objection to this kind of a publication?

Mr. **Richtman**. Money. The possibilities of having it printed the way you described is directly related to a funding source for it. I understand from the Senate Printing Clerk that once our report is submitted to Congress it can be reprinted by anybody if the Commission agrees.

So, if someone could find a funding source for printing another 2,000 copies of this report with photographs and colored maps and charts and all that, we could do it if the Commission approved it. We would have to take some action on that.

Chairman **Abourezk**. Maybe banning the books would do it and sell it.

Mr. **Richtman**. As I understand it, it becomes part of the public domain once it is printed.

I know how expensive it is. That little orange book that we distributed, I think, cost $25,000 or $30,000 to print.

Congressman **Yates**. Is there any way that Senator Cannon can be moved?

Mr. **Richtman**. Well, let me say this. We would have to pass a concurrent resolution stating how much it would cost. We would have to get estimates from all sorts of printers stating how much it would cost to print exactly what we want, and then it would have to be passed in the House and the Senate and have to be approved first by the Rules Committee and the Joint Committee on Printing. And they have said that there is no way that they would approve that kind of expenditure.

We are talking about hundreds of thousands of dollars additional cost.

Commissioner **Dial**. Mr. Chairman, I believe you tried to furnish 10 copies of the task force reports to each Commissioner. What about the final reports? Will you furnish 10 copies?

Mr. **Richtman**. We can furnish more than that. We will have 1,500 copies of that report, and I think we talked with the Commissioners at some point about supplying each Commissioner with 50 copies or so of the final report.

Commissioner BRUCE. Is there anything, Mr. Chairman, that prevents us from moving ahead on this last suggestion about printing it privately?

Chairman ABOUREZK. No; in fact——

Commissioner BRUCE. If we could find the money?

Chairman ABOUREZK. I think a motion would be in order to grant the Commission's permission for anybody that wants to print the product.

Commissioner BRUCE. I would like to make that motion.

Chairman ABOUREZK. All right; is there a second?

Congressman MEEDS. Mr. Chairman, would you make sure that we give our permission for its printing and distribution by a nonprofit organization?

Chairman ABOUREZK. There is a vote in the House. What is your motion now?

Commissioner BRUCE. That we explore the possibility to find the funds to print the final report with pictures and so forth.

Chairman ABOUREZK. Well, it seems to me that as a Commission we ought not explore the possibility of the Commission—the individual Commission members can't do that. But I think the only thing we need to act on is granting permission at this time for any private concern who might want to print that for us with photographs and so forth.

Do you want it on a nonprofit basis or how do you want it?

Commissioner BRUCE. On a nonprofit basis.

Chairman ABOUREZK. That is the motion. Is there a second?

Commissioner DIAL. I second it.

Commissioner BRUCE. Somebody said something about photographs.

Chairman ABOUREZK. I said that.

Commissioner WHITECROW. Are we saying that they can edit it in any way they want with photographs, anything else that they want in it?

Chairman ABOUREZK. I think they ought to print it just as they see it.

Commissioner WHITECROW. Exactly.

Commissioner MEEDS. Mr. Chairman, you have a very good point there.

Commissioner DIAL. What happens? You know the Commission report is all finished. Now, suppose an individual wanted to print it—take McMillan & Co., we'll say—and it would be fine for someone to do this.

So, these reports would be available for university students and anyone else. What I want to know—the legal aspects here—suppose let's say Louis Bruce works out a deal with McMillan & Co. to publish the entire Commission report.

Can he do this without the permission of the Congress? Could he reach an agreement without the permission of the Commission? Could he reproduce the entire report?

Chairman ABOUREZK. Let me tell you—without looking up the law—what I have seen happen. Remember the President's Commission on Pornography. It printed a very nice report. Some private concern took that Commission report and had it reprinted with dirty pictures all the way through it. There were some of the most horrible pictures I had ever seen. I, personally, don't think there is any way, whether we pass this resolution or not, that we are going to prevent people from printing it because I believe it does go into the public domain.

You said it requires the Commission's consent. I don't know that it does.

Commissioner **Dial.** If it goes into the public domain then any individual can take the entire report, work it out with a publisher, and make it available all over the country.

Chairman **Abourezk.** That is right.

Commissioner **Dial.** I believe that is the way it is.

Commissioner **Deer.** Mr. Chairman.

Chairman **Abourezk.** Yes?

Commissioner **Deer.** Does this mean that whoever would do this can also edit it? They wouldn't publish the whole report in its entirety?

Chairman **Abourezk.** Yes; that is true.

Commissioner **Dial.** Well, an individual, Mr. Chairman, if he so desired, could say he is going to do a 500-page book—the entire Commission report—and give it any kind of name. You can't keep them from that?

Chairman **Abourezk.** That is right. I don't think you can.

Mr. **Richtman.** I think the only restriction is that a private company, enterprise, or whatever couldn't reproduce this book or whatever into a book and call it the Report of the American Indian Policy Review Commission. They would have to indicate that this is their edited version if it is not faithful to our version of it. They would have to indicate that.

Chairman **Abourezk.** They would have to say edited report of the American Indian Policy Review Commission.

Mr. **Richtman.** Right.

Commissioner **Borbridge.** Mr. Chairman, this point was raised earlier with respect to the addition of photographs.

If this additional enterprise, that other Commissioners have referred to, should take place: Might it not be possible to have the volunteer effort of a committee chaired by yourself, which is to say, perhaps, the staff director could approve any photographs that might be added to any further report if such should take place?

I am just wondering about how those might be approved, and that is about the only way I can think of it right off hand.

Chairman **Abourezk.** I don't think we can prevent anybody who wants to print photographs or anything else.

Commissioner **Borbridge.** No.

Commissioner **Dial.** Well, I think it needs to be made available, because a year from now you will try to get this from the Government Printing Office and they will say, "Well, we don't have any more." It needs to be distributed around the country, it needs to be in all the big public libraries and university libraries.

Chairman **Abourezk.** Is chapter 7 ready?

Mr. **Downs.** Where is chapter 7, do we know?

Chairman **Abourezk.** That is what I am asking you.

Mr. **Downs.** Could we take about 5 minutes recess?

Chairman **Abourezk.** What, 5 minutes?

Mr. **Downs.** Yes, sir.

Chairman **Abourezk.** All right, we will take a 5-minute recess.

[Whereupon, at 11:28 a.m., a short recess was taken.]

Chairman **Abourezk.** The Commission will come to order.

The famous chapter 7 is now here. We are ready to resume.

Tony Strong is handling this, right?

Mr. **Strong.** That is correct, or it is handling me.

Chairman **Abourezk.** All right.

Tony, you weren't here for the meeting yesterday. What we are interested in is knowing what the substantive changes are in the chapter. We would like a description of those changes, what was said originally, and what it was changed to, so that the Commission can pass on each change.

Mr. **Strong.** The only real substantive change in chapter 7 was dealing with human resources.

Chairman **Abourezk.** All right. How was it changed?

Mr. **Strong.** There were several recommendations in chapter 7 that were very detailed.

Congressman **Meeds.** Are they in here?

Mr. **Strong.** No. There were a lot of changes made in language on the narrative parts of the report. A lot of it had to be beefed up. The way I look at it, there were recommendations in there that were passed upon that didn't have enough substantive background on them. I took the past 2 weeks to beef up the narratives on those. The section dealing with human resources had a lot of recommendations——

Congressman **Meeds.** What page is that?

Mr. **Strong.** Human resources would be on——

Congressman **Meeds.** Are all the recommendations at the end, on page 98?

Mr. **Taylor.** No, Congressman Meeds. The recommendations follow each particular subject area of treatment.

The table of contents that covers this is rather difficult to read because the Xerox was running out of ink, but the page numbers do show where the recommendations appear.

Commissioner **Borbridge.** Because of the appearance of the copy here: Would you give us, in successive order, the pages on which the recommendations occur?

Mr. **Taylor.** Yes; I would like to do that, and I think there are other areas besides human resources in which other changes have been made.

Mr. **Strong.** The most substantive ones were in human resources.

Congressman **Meeds.** What were the changes?

Mr. **Strong.** In human resources?

Congressman **Meeds.** Yes.

Mr. **Strong.** All the very detailed recommendations on what kind of school should be set up, who should be in it, what kind of program they should run in the school, who should be on the board of directors, whether or not there should be an advisory board made up of recommended people who would be appointed by the President of the United States.

I don't know how they got into the first draft. I understand from some discussions down there that it was not intended to get in there and somehow it got into it.

Chairman **Abourezk.** What got into it?

Mr. **Strong.** The discussions of the dialog on the recommendations for setting up of a school.

Chairman **Abourezk.** What kind of a school?

Mr. **Strong.** It would be a natural resource school for Indians.

Chairman **Abourezk.** All right. Is that in your changes in your final draft?

Mr. **Strong.** The recommendation for changes in educational programs is in the final draft, and that was narrowed down. All those recommendations that were in there were narrowed down to changes in educational programs from grade-school level through high school, and then some emphasis being put on natural resources issues while they are in college.

Chairman **Abourezk.** Tony, what page is the human resources recommendations on?

Mr. **Strong.** I am trying to find that now. I am sorry I wasn't able to get this to you sooner. I just finished it this morning.

Chairman **Abourezk.** All right.

Mr. **Strong.** It was more to the point of about 10 minutes ago.

Chairman **Abourezk.** Would that be physical interstructure? Is that what you call human resources?

Mr. **Strong.** It was originally physical interstructure—just as a part of physical interstructure. I made a whole separate chapter on it rather than dealing with——

Chairman **Abourezk.** You don't have it in the index.

Mr. **Strong.** That is correct. The index was typed about 15 minutes ago.

Chairman **Abourezk.** Well, if it is not in the index it is probably not in the contents.

Mr. **Strong.** I may have left it down there, and I am just terribly sorry if I did. Let me look through this stuff here and see how it goes.

Mr. **Taylor.** Perhaps Tony could explain what it is that was written. I think there is a considerable modification that would meet with the Commission's approval because it scaled down the concepts of the President of the United States as superintendent of the school system, and tried to bring training programs to the reservation level.

I think, also, they are very modest concepts with respect to expenditure of money in connection with human resources.

Mr. **Strong.** There is a whole section that deals with human resources.

Apparently it got left behind when we put this thing together.

Chairman **Abourezk.** We are just about ready to wrap up and vote on the final passage of this whole report.

Mr. **Strong.** Yes; I understand that.

Chairman **Abourezk.** What do we do now?

Mr. **Strong.** There is one alternative we can do. I can go down there and get it.

Chairman **Abourezk.** That seems to make sense.

Mr. **Strong.** Then why don't I do that?

Chairman **Abourezk.** No; you stay here.

Are there any other changes that we have here before us that we could talk about?

Mr. Taylor. Yes, Mr. Chairman, there are.

In the original write up on economic development there was no discussion with respect to agriculture and the cattle industry. There now is a section in this chapter on that. The recommendations appear on page 33.

Chairman Abourezk. So, are these all brand new recommendations?

Mr. Taylor. Yes, sir.

Essentially, these recommendations get to the problem of the cycle of leasing of trust allotments, particularly to non-Indian cattle raisers or farmers, the position that the individual allotee is in and the posture of the Bureau of Indian Affairs in continuing these leases. The narrative discussion points out that many of these farm leases are for a fixed period of 5 years, usually with options to renew at the end of that 5-year period.

In fact, there is a rather continuing practice that trust allottees renegotiate those leases annually, even though they were originally a 5-year term and, as a result, the tribe loses an opportunity to consolidate functional farm areas short of simply acquiring title to the land.

So, one of our recommendations here is the tribes should be given a first option on leases of trust land within reservation boundaries.

In the land acquisition section of this report, which has no changes, a recommendation was made the last time for the establishment of a special fund to aid in consolidation of land. The recommendation here would call for the utilization of that fund also for the tribe to buy up lease options or lease interests, and it recommends that that fund be specially tailored so that the tribe, for example, could acquire a lease interest that may have 5 years to run. The person who rented the property would not want to give his lease up for 5 years, but the tribe would be able to expend money in advance in anticipation that at the end of the lease term they could take over the lease interest in that parcel.

There is also a suggestion, with respect to heirship problems or recommendations, that laws be amended by Congress to provide that powers of attorneys—which trust allottees and heirs very frequently execute to the Bureau of Indian Affairs to put them in the posture of the landlord and the person doing the leasing—that provision be made that those could be executed in favor of the tribe so that the tribe itself could undertake this function of leasing out the property.

So, essentially, that is the direction that these recommendations take.

Chairman Abourezk. You are saying we never passed on those before? It seems to me we had a lengthy discussion about heirship problems.

Mr. Taylor. Yes; it is similar to the problem that you encounter in land acquisition and consolidation, and this is trying to get a different phase of it.

Congressman Meeds. There are other recommendations with regard to heirship; are there not?

Mr. Taylor. Yes.

Chairman Abourezk. That we have already passed on?

Mr. Taylor. Yes.

Chairman Abourezk. I am sure we have.

Mr. **Taylor.** Yes; it was this agricultural lease problem that we felt really hadn't been dealt with.

There is another recommendation here that springs out of the problem that I guess is frequently encountered in Indian grazing land where sound conservation practices are not being followed. Papago Reservation was singled out as an example, where apparently there is substantial overgrazing.

The General Accounting Office, in 1975, had a very comprehensive report on all Indian natural resources. They singled out Papago, and had a finding to the effect that the Papago Tribe had never instituted range management procedures. The Bureau of Indian Affairs had never instituted these, even though the tribe and the Bureau have known for 40 years that this land was being overgrazed.

The GAO found that one of the problems here was traditional Indian culture, which favors animal ownership. However, when you look at the economics of the situation, it would appear very likely that the problem of overgrazing comes from the fact that these people are so poor they cannot cut back without suffering grave economic consequences to themselves.

So, again, we recommend that the tribe and the Bureau institute sound range management programs; that the Congress endorse a concept similar to soil bank, which would pay individual Indians for taking their cattle out of the pasture land and not grazing them for a period of years necessary for that range to regenerate itself. It is, in my opinion, a recognition of the economic realities of the individual cattle owner.

That is essentially the recommendations that are in this section.

Congressman **Meeds.** Any other changes?

Mr. **Taylor.** If I might just quickly run through: The land acquisition and consolidation is the same as it was before, and timber recommendations are the same.

Tony, how about water?

Mr. **Strong.** Water recommendations are the same as before.

Chairman **Abourezk.** Minerals?

Mr. **Strong.** The mineral recommendations in the present chapter—the present form that we have them in—have not changed. However, while I was going through the data that we have on it, I ran across several other problem areas that were not identified by the person who wrote the first chapter on economic development.

Those problem areas were things that were identified by the General Accounting Office and it pointed out several different areas of deficiencies in contracts and lease agreements between Indian tribes and development companies.

One of those areas that was identified was that royalty rates were usually way too low. I'm sorry, that may have been identified as an earlier recommendation, but the recommendation on it wasn't getting to the point of being able to allow the tribes to be able to develop the resources themselves or be able to attract some of the right kinds of—let me back up here.

I'm sorry. I really haven't slept in 2 days.

[Laughter.]

Mr. **Strong.** One of the major deficiencies, as I recall, was the enforcement provisions of contracts. Now that kind of recommendation was not in the original draft. It is not in the present draft, but my personal recommendation would be that it would go in and you could vote on it. One of the difficulties that comes about from lack of enforcement of the provisions that are in leases themselves is that the tribe loses tremendous amounts of money. Some of the areas of lack of enforcement would be for collection of royalties themselves or collection of late fee charges.

Some of the provisions in the leases call for reporting to the U.S. Geological Survey and the Bureau of Indian Affairs on what amounts of development are taking place on the resources that they are exploiting.

A lot of those things were identified as not being reported to the U.S. Geological Survey and the BIA, and the BIA or the Geological Survey was not requesting the stuff because, as they identified, it was lack of funds.

Congressman **Meeds**. Mr. Chairman, could I ask a question?

Chairman **Abourezk**. Certainly.

Congressman **Meeds**. Recognizing you haven't slept for 2 days, Tony, if Peter wants to help you out that is fine with me.

Mr. **Taylor**. Sure.

Congressman **Meeds**. I am sure you both recognize one of the criticisms I made of the recommendations was that there was no recommendation in this report for a waiver of sovereign immunity by tribes. One of the greatest impediments to contracting and to development of reservations, as I see it, is that there is probably no way for tribes to waive their sovereignty, and, therefore, contracts cannot be enforced against tribes. Therefore, people do not enter into contracts with tribes.

What, if anything, was done before or is being done by changes that were made to address that problem?

Chairman **Abourezk**. May I just ask a followup question on that, Lloyd?

Congressman **Meeds**. Surely.

Chairman **Abourezk**. The tribe can be sued in tribal court. Is that correct or not?

Mr. **Taylor**. I think they would have the same defense of sovereign immunity in tribal court as they would elsewhere.

Congressman **Meeds**. And there is even a question as to whether they can waive it. It probably has to be waived by the Federal Government.

Mr. **Taylor**. Congressman Meeds, I know that there is a recommendation in this report that tribes are being authorized to waive their sovereign immunity.

Congressman **Meeds**. Was that a recommendation before? It was not in the original recommendations because that is one of the things which I suggested as a shortcoming of the report. Has someone put this in? If so, I would like to compliment him.

Mr. **Strong**. In reviewing the data that was available to me at the Commission office and in the Library of Congress, I never did come across that as a difficult area or an area of difficulty for the tribes.

There seems to be a substantial amount of development going on on the reservations without any kind of countrol by the tribes themselves. There is usually the case where the tribe is not able to control the exploiting company to any sufficient degree to protect itself.

Those are the big problem areas that I ran across. I really didn't come across any kind of data that would support a recommendation like that.

Congressman MEEDS. Were questions asked of people who potentially would have sought a contract with Indians?

Mr. STRONG. In the week that I had to do this, I didn't go out and do a survey; no.

Congressman MEEDS. Without sleep.

Mr. TAYLOR. I know that we had prior discussion on this point, in the context of tribes being able to override a secretarial veto of their use of the trust asset, and this was cited as one of the problems.

I have located our recommendation now. It falls under the chapter on investment capital, and the recommendation is at page 7-84.

Congressman MEEDS. Was this in the report before?

Mr. TAYLOR. I think that it was. I thought I saw it in the summary, but I didn't bring the summary with me. I just happened to see that this morning.

Congressman MEEDS. We looked very closely for it and were unable to find it. Incidentally, I think this is an excellent recommendation. It seems very inconsistent to me for this Commission to be asking for all this jurisdiction, all this authority and responsibility for tribes, and yet not to have them be able to waive their own sovereign immunity.

So I compliment whoever put this in there, finally. I think it is a step in the right direction.

Mr. TAYLOR. I think it would interconnect. Mr. Meeds, with the part we did on tribes setting up the system for overriding a secretarial veto. It would directly relate there.

Commissioner WHITECROW. Mr. Chairman, in regards to the concern I expressed at our previous meeting concerning the possibility of international financing for a tribe: What has been done in that regard?

Chairman ABOUREZK. Do you mean foreign aid?

Commissioner WHITECROW. Foreign aid.

Congressman YATES. There has been a recommendation made of a similar nature. In the overview there was a discussion on World Bank concepts. As I understand how the World Bank operates, they would not have jurisdiction to come into the United States and give grants to tribes.

I can't answer the question whether, if it was authorized by Congress, they would actually go ahead and do it.

Commissioner WHITECROW. Are there any statements here?

We had many comments that came from the staff that did some research in this regard. I would like to have a report on that if I could.

Mr. STRONG. In line with your earlier request, Mr. Whitecrow, on page 7-84, point number 4, there is a recommendation that deals with the same type of concept.

Commissioner BORBRIDGE. Which number recommendation?

Mr. STRONG. Number 4—the last sentence in number 4 would be addressed to what you are concerned about—careful consideration for the development bank project.

Congressman YATES. There are now in existence certain types of funds for the developing stages such as the loan guarantee fund that is funded out of my committee. How does your proposal differ from that?

Mr. STRONG. The loan guarantee fund has so many restrictions that come with it that it is very difficult—and the amount of money—I don't mean to interrupt——

Congressman YATES. No.

Mr. STRONG. But the amount of money——

Congressman YATES. That $15 million.

Mr. STRONG. Yes; the amount——

Congressman YATES. But they have never really used it up. As of the present time, I don't think they have even gone into the amount of money.

I have no objection to a development bank, but I assume it would replace the loan guarantee fund. There are a number of funds that are available at the present time, and I don't know whether we would contemplate that your development bank would replace all of these.

Mr. STRONG. I hadn't given consideration, personally, to whether or not a development bank would replace all of those. If the development bank were to be more flexible than the present loan guarantee funds that are available to BIA it would seem that——

Congressman YATES. Do you, in your commentary, point out the restrictions and the obstacles that are encountered by these people?

Mr. STRONG. Yes. I will try to locate them.

Congressman YATES. I didn't mean to take you away from Commissioner Whitecrow. Let me gaze upon this as he asks his question.

Commissioner WHITECROW. Would you explain to us what took place with the comments that you brought back that explains the international finance situation? Tony tells us he is not too familiar with that concept.

Mr. STEVENS. One of the people that did the research said that the World Bank was kind of a misnomer, not exactly a bank in that sense. I wish you could hear it. It was the conditions, I think, that we would be mostly interested in.

The United States has spent about $178 billion and, you know, that is expensive aid. I think it was loans. They made some progress in the process of extending many loans that are very advantageous, like very little interest, or else period of times of about 10 years that you don't have to make payments.

What is needed on the reservation is a central development bank. For instance, in farmers' homes and some of the regular financial issues today, like, say, if you want to buy agricultural properties, with the existing rates and with the way the situation is in terms of the assets to raise capital, you can get lower rates than ours.

With the existing rates to farmers' homes with the regular institutions, Indian tribes have a very difficult time breaking even on buying property. We have had a lot of problems with farmers' homes and part of it is the financial. The other part is that we have to justify that it is a profitable venture before they will loan you the money, and with the existing rates they give you, in the purchase of land, and what the fundamental problem on reservations today is the fact that they need the development bank. They don't have access to regular financial institutions and they don't have that kind of condiments themselves.

We are saying they need a special trust fund. They need a development bank just as the rural countries do. Of course, you say they are part of America, and that is true, but they are not part of financial America. They do not have money of their own.

In order to stabilize the economy we need things like a type of development bank or else to change the kinds of restrictions. The most difficult problem that they have today would be negotiating with the Buerau of Indian Affairs and the Small Business Administration. The Small Business Administration has restrictions and the most difficult part of our securing loans, like, say, in Indian financing, is that Bureau of Indian Affairs people are not able to make these loans to an Indian.

Congressman YATES. Why?

Mr. STEVENS. They are not capable of doing that. They don't know how.

Congressman YATES. They know the money is there.

Mr. STEVENS. Two years ago when they started financing that and they were already at the end of the financial time, it was like April. They were getting ready to call it in. I went to Pine Ridge at their request to talk about the financing act and try to get an estimate.

I think the reason the BIA people are credit people and they are in charge of it and they are not technicians. And not only had they applied two sections in the regulations but they had to tell them how it went.

A month later the Bureau called the money back.

Congressman YATES. The Bureau ought to be just abolished. There should be something else set up because it is totally inept at the present time.

Commissioner WHITECROW. I would like to say also, Mr. Yates, that in the area that I come from we had people turned down, just here recently, from the Bureau on loan guarantees because they said that they were out of funds. This was just this past week.

So, the concern that I want to express here is that we are in the process here of new developments, and if it is difficult to provide international financing and if it is too difficult for a commission of this nature to face, I don't see that as an obstacle because we have undertaken many many obstacles in this entire process.

And this Commission is in the process of making recommendations for a new policy and that any obstacle that is in the way, we have a potential of working toward removing those obstacles. Now, if there is a better suggestion than going to the World Bank financing, perhaps it is increasing the loan guarantee and reducing the interest rate.

But we are in the process of trying to develop Indian nations, Indian tribes, those principles in developing industry, in developing an economic impact that will improve a community in which these Indian nations reside.

I feel that we are going to be missing the boat as a Commission unless we provide some form of an investment capital available to these tribes either to allow them to enter into joint ventures or to totally bring about an economic development in their own community.

The programs that are currently available are so encumbered with rules and regulations that most of these tribal officials today just throw their hands up in the air and walk away from it. My meetings with the World Bank people—they indicated to me that the loans that they have made for 50 years, also that they make three-fourths of 1 percent interest loans, and that there is a 15-year grace period on these loans.

I concur with the attitude of our chairman, that in the past he says that our recommendations don't go far enough, they are not point blank. We have too much in generalities here.

For instance, with this No. 4 it says, "Because of the large scale capital requirements of Indian country, Congress should consider the establishment of an Indian development bank." That does not tell me that this Commission is saying, "Congress, do it." That just says, "Congress, please think about it."

I think our recommendations should say point blank what we really mean. I don't think this says it. This doesn't say it to me. It just says, "Please, Congress, help us." Here we are, a congressional Commission. Let's recommend to Congress point blank what it is we mean. Let's not beat around the bush. I don't think we are doing that in recommendation No. 4 at all. I don't think we are reaching the economic impact needed to bring about improvement and development of areas.

Mr. **Strong.** Let me diverge just a little bit here and explain something that I was not aware of because I hadn't worked on the Commission staff in writing up the report itself. The thing that I wasn't aware of in the past is that I could change the nature of the recommendations that were voted on in the last meeting. As a understood it, I had to keep the recommendations that were in existence.

Congressman **Meeds.** Mr. Chairman, in view of the fact that No. 3 is now on page 7–84. I would ask unanimous consent to delete from my dissenting views that section dealing with the failure of this Commission to recommend that tribes be allowed to waive sovereign immunity.

It was not in the report before and that is why I complained about it. It, again, points up the process we are going through here, if I had not asked about it it never would have been mentioned and my dissenting views would look kind of strange.

Chairman **Abourezk.** I think they look strange anyhow.

Congressman **Meeds.** Yes; well, in view of your majority opinion I guess you would. But I would just like to ask unanimous consent that that section be deleted.

Chairman **Abourezk.** Without objection—Fred, you will take care of deleting it, right?

Congressman **Meeds.** And that any other section that looks strange maybe I would be allowed to insert something at the beginning saying, these were dissenting views based on the original report. Insofar as the final report may have been changed to reflect or to meet some of these criticisms—I am delighted.

Commissioner **Dial.** May I just respond to that? I don't think you need unanimous consent, Lloyd. If you want to make any changes in that dissent prior to May 17, you are very——

Congressman **Meeds.** Mr. Chairman, I think anybody who deletes anything from that report as approved——

Chairman **Abourezk.** But your dissent——

Congressman **Meeds** [continuing.] Perhaps to get——

Chairman **Abourezk.** No; that is true, but I am talking about your dissent. Nobody needs to approve that but you. So, if you want to change it, you are entitled to do that on your own without consent of the Commission.

Congressman Meeds. Well, I do not intend to do that except, as I just stated, as it might have been rendered inoperative by a later change. I don't think anybody else ought to be doing that either.

Chairman Abourezk. No, no, we are not.

Congressman Meeds. But once it is approved, it is approved and no change is to be made in it.

Chairman Abourezk. We are not talking about the report. We are talking about your dissent which is the sole responsibility of Lloyd Meeds.

Congressman Meeds. My dissent is new a part of that report. I agree that I should be allowed to say anything I want.

Chairman Abourezk. That is right.

Congressman Meeds. But I don't think I should be allowed to delete anything I have already said without unanimous consent or a vote.

Commissioner Whitecrow. Would that also indicate that if we have a motion, perhaps, if I could get permission that we could delete the entire dissent?

Congressman Yates. Mr. Chairman, I don't understand one thing. I don't understand how you can file a dissent to a report when the report hasn't been fully approved yet.

So I would think your dissent really doesn't become operative——

Chairman Abourezk. That is right.

Congressman Yates (continuing). Until we have a report.

I don't think we should have a consent to do it.

Chairman Abourezk. Lloyd can do anything he wants, with or without our consent, to his dissent.

Congressman Yates. That is correct because the report hasn't been approved yet.

Chairman Abourezk. That is right.

Congressman Yates. I would think the dissent hasn't been approved really, technically.

Chairman Abourezk. That is right.

Congressman Meeds. All right.

Commissioner Dial. I would like to say that I read the 102 pages last evening and I think that in reading this considered opinion by Congressman Meeds that to me it would lead me to believe that he is objecting to more than he really denies that he is really objecting to. I hope people who read this opinion will understand that it stood for something. In other words, he is not against the entire report.

For instance, I would say that, perhaps, he supports chapter 11 wholeheartedly. I don't know. But this is one thing that I am afraid, Congressman Meeds, that people will get the idea that you were opposed to all of the report, which you are not.

This is what I gather from reading the 102 pages. Again, I realize you are dealing with certain subjects like tribal problems, press relationship, and so forth.

Chairman Abourezk. I think the human resources section is here. While Tony is orienting himself to that: May I bring up another issue that we can pass on or not at this point?

I finally have a draft in production that I would like to offer before adoption by the Commission. I have passed out copies and I want to make a modification in the introduction. I passed out another sheet.

The other sheet deals with Felix Cohen's quote which I want to insert on page 3 of the draft introduction. Now, starting on line 4 of page 3 where it says, "Encourage, within the larger culture, societies of Indian people" strike the word "with" and insert in lieu thereof "who wish to maintain their own unique governments" is another insertion "cultures and religions."

Then a new paragraph, "As Felix Cohen once said:" and then I would like to insert the quote on that other sheet of Felix Cohen. And the rest of it remains the same.

I am offering these changes to the introduction of the report.

Congressman YATES. Was that, "their own unique governments"?

Chairman ABOUREZK. "Their own unique governments, cultures, and religions," right.

Congressman YATES. That is just an insert rather than something——

Chairman ABOUREZK. Right.

Congressman MEEDS. What was that again?

Chairman ABOUREZK. "Their own unique governments, cultures, and religions."

Congressman YATES. I don't understand the use of the term "government" there?

Chairman ABOUREZK. Tribal governments.

Congressman YATES. Is that what you are putting in, "tribal governments"?

Chairman ABOUREZK. No; I am putting in "governments", but it refers to tribal governments, obviously.

Congressman MEEDS. Mr. Chairman, what if their religion happened to be a state religion? Would that also be acceptable to the chairman even though it might be a violation of the first amendment?

Chairman ABOUREZK. Well, the introduction doesn't deal with whether it is a state religion or not. That would have t be taken up as a separate issue. This is merely the introduction, not a legal background and not a constitutional one.

Congressman MEEDS. Well, I am speaking against the proposal of the chairman for several reasons. First let me read from the dissenting opinion, page 100, at the bottom, beginning "That would be unfortunate. While it may have been necessary at one time to pursue the melting pot theory in this Nation, we are now big enough and strong enough, mature enough, hopefully wise enough to countenance and even encourage diversity in our own culture."

I am struck by how close we track in this desire that Indian people be allowed to exercise and to keep their own cultural diversity. I certainly feel that that is a central desire of everybody on this Commission, but I do not wish to see the Indian people practice or to have a state religion which would be a violation of the first amendment and, as I see it, also a violation of the first article of the Indian Civil Rights Act.

I think when we say "their own religion" we leave that open. Additionally, I disagree with the statement on the first page where it says "trust relationship and the right to sovereignty are of the highest legal standing, established through solemn treaties, and further ratified by layers of judicial and legislative actions". I disagree with that also.

For that reason I would be against the proposed——

Chairman **Abourezk**. Do you want to offer any amendments to it or just——

Congressman **Meeds**. I will just oppose.

Chairman **Abourezk**. Any other questions or comments?

Commissioner **Deer**. Mr. Chairman, I move for the adoption of the introduction.

Chairman **Abourezk**. A motion has been made to adopt the introduction as modified.

Commissioner **Dial**. I second it.

Chairman **Abourezk**. Seconded. All those in favor will raise their right hand.

Congressman **Yates**. Mr. Chairman.

Chairman **Abourezk**. Yes?

Congressman **Yates**. Is there any discussion on the motion?

Chairman **Abourezk**. If you want to.

Congressman **Yates**. All right. I would like to discuss for a moment. I am not sure what you mean by "the right to sovereignty," Mr. Chairman, at that point. Do you mean total and complete?

Chairman **Abourezk**. Which, Sid?

Congressman **Yates**. By what Lloyd is talking about. "What generally is known as trust relationship and the right to sovereignty." Do you mean total sovereignty or are you having a separate nation within the United States through that concept?

What do you mean by that?

Chairman **Abourezk**. Sid, it is recognized throughout the report that sovereignty is at the will of the Congress of the United States, and whatever is said in this introduction, of course, is more or less by reference to what we have adopted as part of the report.

So, what this means by sovereignty is the kind of modified sovereignty that is expressly recognized throughout the report itself which is a modified sovereignty at the will of the Congress.

Congressman **Yates**. I think your verb is wrong.

Chairman **Abourezk**. Which verb?

Congressman **Yates**. You said that the trust relationship and the right to sovereignty "is of the highest legal standing". Do you mean, "are of the highest legal standing?"

Chairman **Abourezk**. You are right.

Congressman **Yates**. Or do you want to say that "the sovereign rights which they possess are of the highest legal standing?" It seems to me that you are subject to an ambiguity there. I wonder whether there is—you are not explaining—almost an individual sovereign right. The State is equivalent to the Federal Government there. Is that plain?

Commissioner **Borbridge**. It could be said, Mr. Chairman, as I would state, "that what is not generally known is that within the Federal system, the trust relationship and the right to"——

Chairman **Abourezk**. Would that do it, Sid?

Congressman **Yates**. Well, perhaps that is what you are doing. I was trying to find out—at least in my own mind—what sovereign rights we are talking about. They are talking about certain sovereign rights. I recognize that the Federal Government has negotiated with Indian tribes in the past and made treaties with them on the basis that they did have certain sovereign rights. Otherwise, they wouldn't have made these kinds of treaties.

And yet, I don't know whether it is intended that they would have a right to secede from the Federal Government, for example, when you say within the Federal Government or the Federal system? Do you contemplate that as being the same as a municipality?

Commissioner Borbridge. No; I wouldn't see any challenge whatsoever to the notion that the plenary power of the Congress, through the Federal Government, is really the paramount part within that.

Congressman Yates. Well, do you mean within or subject to the Federal Government?

Commissioner Borbridge. Yes; this is what I was suggesting.

Congressman Yates. Within the Federal Government?

Commissioner Borbridge. Yes.

Congressman Yates. And you contemplate that the phrase "within the Federal system" means the power of the Federal Government and parts of the Government are sovereign to that, to any sovereignty of the Indian nation?

Commissioner Borbridge. Right.

Congressman Yates. With that kind of an explanation, I don't see any objection to that phrase.

Chairman Abourezk. All right.

Commissioner Borbridge. Then if we are to be consistent with everything we have said thus far——

Chairman Abourezk. Yes. I will further modify the introduction on page 1, starting on the sixth line, eight lines from the bottom, "What is not generally known nor understood is that within the Federal system the trust relationship and the right to sovereignty are of the highest legal standings," and so forth. Does that clarify it enough?

Congressman Yates. I am not sure about the phrase, "right to sovereignty." I don't know quite what that means. Would you try to clarify it for me? Jim, what do you mean by the "rights of sovereignty"?

Chairman Abourezk. The rights granted by the Federal Government to the Indian tribes. They have granted modified sovereignty to the tribes.

Congressman Meeds. I agree.

Congressman Yates. If that is what that means then I——

Chairman Abourezk. This doesn't challenge anything that has been said in the report, Sid. It goes along with it.

Congressman Yates. OK.

Congressman Meeds. May the record show what the chairman just said? "The Federal Government has granted to the tribes modified rights of sovereignty."

Chairman Abourezk. The trouble is we say that in the report. It is one thing I never understood about your dissent is that you seem to say that ought to be said in the report——

Congressman Meeds. In the report it says——

Chairman Abourezk. May I finish?

Congressman MEEDS. Yes.

Chairman ABOUREZK. You seem to say in your dissent that we deny that in the majority part of the report. Yet, it is in the majority part of the report.

Congressman MEEDS. Is that in the majority part of the report, Peter?

Mr. TAYLOR. I think you could say that the Federal Government has granted that sovereignty in the context that we have talked about by never having taken it away. It has recognized the tribes as the governmental body through which it administers its Indian policy. It has never taken the sovereignty away.

Chairman ABOUREZK. We have said, time after time, in the report that it is at the will of Congress whatever rights——

Congressman MEEDS. But you see, Mr. Chairman, there is a vast difference in the tribe having the sovereignty which the Federal Government grants them and the tribes having inherent sovereignty—sovereignty which the Federal Government has not taken from them. Time after time after time in this report, in the majority opinion, we are saying that tribes had and have inherent sovereignty, are we not?

Chairman ABOUREZK. That is correct, subject to the will of Congress.

Mr. TAYLOR. Yes.

Congressman MEEDS. Subject to the will of Congress. And that they have and possess all that sovereignty which the Federal Government has not taken from them or modified or abrogated.

Chairman ABOUREZK. That is right. That is the 10th amendment. The 10th amendment says that. Whatever rights not taken by the Federal Government are left to the people. We now call Indians people.

Congressman YATES. Mr. Chairman.

Chairman ABOUREZK. Yes?

Congressman YATES. May I read the paragraph to you? I think that that sentence does not refer to the Indian people. I think it intended to but it doesn't do it. I think you ought to amend it to say what you mean. Let's read that paragraph.

"But what is not generally known or understood is that the trust within the Federal system, the trust relationship and the right to sovereignty, is at the highest legal standing." We have not talked about the rights of sovereignty before of the Indians and I think you ought to indicate that what you intend there is that it be in the Indian people.

It is a sentence that is isolated standing by itself and it isn't identified, as I read that sentence. I don't know if I am wrong or not but that is the impression I have. "Within the Federal system the Government's trust relationship with the Indian people and their sovereign rights are of the highest legal standing. Trust relationship with the Indian people and their sovereign rights are of the highest legal standing." I would offer that in there.

Chairman ABOUREZK. The trust relationship within the Federal system with the Indian——

Congressman YATES. "The Government's trust relationship with the Indian people and their sovereign rights are of the highest legal standing established by solemn treaty." I don't know what "further erected" means but I would say "and by layers of judicial and legislative actions." I don't see why you need "further erected."

Chairman **Abourezk**. Wait a minute.

Congressman **Yates**. "That within the Federal system the Government's trust relationship with the Indian people and their sovereign rights are of the highest legal standing, established through solemn treaties, and by layers of judicial and legislative actions." Why do we need "further erected"?

Chairman **Abourezk**. OK. Now how did you say the sovereign rights again?

Congressman **Yates**. Their sovereign rights. The Government's trust relationship with the Indian people and their sovereign rights, whatever they may be.

Chairman **Abourezk**. All right. I can accept that.

Congressman Yates. OK.

Chairman **Abourezk**. All right. Any other discussion? If not, the motion has been made and seconded to adopt this as modified. All those in favor will raise their right hand.

Congressman **Yates**. Mr. Chairman, before we——

Chairman **Abourezk**. Yes?

Congressman **Yates**. May I just ask, would you put the word "tribal" in front of "Government" on page 3? You said you wanted to amend it to include "government, culture, and religion." Would you make it with their "tribal government" so it isn't their government as such, it is their tribal government? Does that change it materially from what you intended?

Chairman **Abourezk**. No; it doesn't. It doesn't change it from what I intended.

Congressman **Yates**. Well, would you put it in there? Wouldn't that clarify it more for what is intended?

Chairman **Abourezk**. All right. I have no objection to that.

Congressman **Yates**. OK. Then I can accept it.

Chairman **Abourezk**. All right. There are seven in favor. How many opposed? One opposed. Seven to one would mean the introduction as modified is adopted.

Congressman **Meeds**. Let the record show that it was Mr. Meeds who was opposed.

Chairman **Abourezk**. Mr. Meeds is opposed. Let the record show that Mr. Meeds opposed.

Here is the modified copy.

Congressman **Meeds**. All the rights of the Indian people.

Chairman **Abourezk**. Let's try to do this human resources part and then we will vote on the final passage.

Go ahead.

Mr. **Taylor**. Mr. Chairman, we have received the narrative portion of our human resources part. Somehow or other the recommendations were not attached. I would like to make this suggestion, that we could simply include those recommendations which I have described. It is essentially vocational education relevant to the natural resource base of the tribe at the reservation level.

It would be adult vocational education and vocational education programs at the high school and junior high level, so that young Indian students would be learning trades relevant to their own reservation base.

Chairman **Abourezk**. Were those the only two recommendations?

Mr. **Taylor**. Tony, isn't that it?

Mr. **Strong**. That is pretty much it.

Chairman **Abourezk**. All right.

Mr. **Strong**. There were other types of recommendations that were in the original report that were deleted.

Chairman **Abourezk**. Will they be retained in this?

Mr. **Taylor**. No; they were modified which we discussed a few minutes ago.

Chairman **Abourezk**. All right.

Mr. **Taylor**. I would like to suggest that we include that with the report, with a notation to the effect that it is advisory only, that it was not formally voted upon by the Commission unless you are——

Mr. **Richtman**. You don't have the recommendations before you as written out. But if you don't want to vote on it without having them before you just——

Chairman **Abourezk**. Well, you have given us the recommendations verbally.

Mr. **Richtman**. Right.

Chairman **Abourezk**. And they deal with vocational education, right? And that is the extent of it.

Mr. **Richtman**. Yes.

Chairman **Abourezk**. All right. I will see if the Commission wants to act on it then. But I don't think we ought to do it provisionally. I think we either ought to do it or not do it.

All right. Any questions on the recommendations of the human resources chapter as expressed verbally by the staff?

Congressman **Meeds**. Mr. Chairman.

Chairman **Abourezk**. Lloyd.

Congressman **Meeds**. I don't have any questions other than I can't read the whole first page of this, and I haven't seen the recommendations. I think this is just another illustration of the unfortunate way that we've gone about this entire proceeding. The thing that I objected to initially and was apprehensive about initially and that was that we are sitting here, in effect, rubberstamping what the staff is doing.

Now, you know, these are fine people, but if this is going to be the Commission's report, the Commission ought to have these things before it and it ought to have clearly any changes that were made. And yesterday it developed that after we'd been told there had been no changes made, we found a change which was a very substantial change. Just by changing some words around it completely skewed the Commission's view.

I don't know what these recommendations are. I am all for vocational education. But what kind of vocational education, where, who pays for it? All these things are very relevant questions which this Commission ought to be asking. We ought to have this kind of information before us before we pass on it.

I would urge the Commission not to act on something without at least having seen what they are acting upon.

Chairman **Abourezk**. Let me respond to that for just a minute. Now, I said once when I was informed that the recommendations were not here in front of us that the Commission would decide whether or not to act on the verbal recommendations.

Now, Lloyd, personally I resent the fact that you say that that is the way this thing has been operating all the way along. It has not been. I think this Commission and the staff have been very responsible, and I think it is an unfair attack upon the staff and upon the Commission to state that we are sitting here rubber stamping the actions of the staff.

We have voted on every single recommendation, to my knowledge, that has been proposed to us. We can either accept them or reject them. We are all grown people, men and women here. I don't think that anybody here is interested in rubber stamping anything.

We either agree with them, or we don't, and I don't know of any other way to operate a Commission other than to have a staff assemble the alternatives that we can decide upon and which I think we have done very responsibly.

I think the Commission members, by and large, have studied these recommendations and have studied the context of the report, and have made their decisions based on that. I think if you want to say, fine, we shouldn't act on it, that is one thing. But to say that this is the way we have operated all the way through, I think it is unfair. It is not accurate.

I think it is a broadly based, unfounded attack on the Commission, and it is similar, incidentally, to the kind of press you were putting out when we brought out the first draft. You said, why this report should be held up for ridicule.

Congressman **Meeds**. No, no——

Chairman **Abourezk**. Well, actually——

Congressman **Meeds** [continuing]. In terms of you, I never said that.

Chairman **Abourezk**. That is the press I read.

Congressman **Meeds**. I said that the report is apt to be held up for ridicule, and this is exactly the way it will be held up for ridicule, is if we do not have the material to work with.

The whole procedure that I am talking about is the procedure we have gone through for the past 2 days. As many as 14 days ago I was told by the staff that we would be presented with a written piece of paper indicating all changes that were made and why they were made.

I got a two-page letter indicating all changes that were made. Now you know, and I know, and the staff knows that that is not all the changes that were made. Indeed, we came across some changes yesterday which were made which we found after I had asked two times right there, "is this all the changes that have been made?" And it was said, "yes," and then we found a very substantial change that had been made.

You said you don't know how we could function. We could function somewhat like we do in your body, and we do on the House side, and that is, when you amend something, you bring in and show what changes you have made. That is all that I ask. I wasn't trying to pick nits. I didn't want to worry about whether we crossed a "t" or dotted an "i." I just wanted to know where substantial changes were made.

We discovered again today another substantial change. Here is a recommendation which I am very much in favor of—for tribes being able to waive their sovereign immunity—but nobody told us it was in there. How many other things are there that have been changed that we are not told have been changed?

Just with this cursory discussion and a few questions I have asked, there are two major changes that have been made that we have not been told about.

Now we are asked to accept some recommendations that aren't even before us in writing. So that is what I am complaining about, and I don't mean to use the word "rubberstamping" in a bad context. I don't mean to be a nitpicker. I just mean to say that this is not a workmanlike way to go about the business of this Commission.

Chairman **Abourezk**. May I respond to that just briefly before I recognize Adolph? I have to inform you that we are operating on a very limited staff basis, and that is why Tony had to stay up for 2 nights without sleeping to try to prepare this chapter.

I have to say that. Let me ask you, Max: How many staff people have been working the last month on the Commission? How many professional staff do we have there?

Mr. **Richtman**. We have had about eight.

Chairman **Abourezk**. No; I mean on the staff payroll.

Mr. **Richtman**. Of the Commission?

Chairman **Abourezk**. Yes. None?

Mr. **Richtman**. Not for the whole month. We had three or four people for part of the month, and then we had help from the staff of the Senate Select Committee on Indian Affairs.

Chairman **Abourezk**. Yes; they are my staff people—the Senate Indian Affairs Committee people.

Mr. **Richtman**. That is right.

Chairman **Abourezk**. Because we have run out of staff money, incidentally.

Congressman **Meeds**. Mr. Chairman, the answer to that, if you yield, is for you and I and Mr. Yates to go back and try and get some more money and to do it right. This is a report which is going to take a significant place in history, and we ought not to be haphazard or sloppy about it.

If it takes more money to do it right, then, I will be happy to support further funding to do it correctly.

Chairman **Abourezk**. I don't think it is being sloughed at all. I think that in the rush to get this down here with the limited staff resources we have, I think they have done an excellent job.

Congressman **Yates**. Mr. Chairman, if I may get into this controversy——

Chairman **Abourezk**. Well, we have to vote on that, Sid.

Congressman **Yates**. I haven't seen chapter 7 before. I must say I am a little unhappy about some of the language I see on page 1, where it says, "That Indian timber, minerals, water, rich agriculture and grazing lands, and fish are exploited by non-Indian enterprises which return a mere pittance for their Indian owners."

If that is true, that is another violation of the trust. I can see this was true in the past. Is it still going on?

Chairman **Abourezk**. Well, let me ask Tony. Do you have evidence that it is still going on?

Mr. **Strong**. On the stuff that I talked about earlier?

Congressman YATES. I just read it: "Indian timber, minerals, water, rich agriculture and grazing lands, and fish are exploited by non-Indian enterprises which return a mere pittance for their Indian owners."

Mr. STRONG. Yes, sir, they are.

Congressman YATES. Can you tell me where?

Mr. STRONG. They are taking place in specific places that were identified by people from the General Accounting Office; they were on the Yakima Reservation and the Quinault Reservation.

Congressman YATES. Are these pursuant to leases that were approved by the Department of the Interior?

Mr. STRONG. Yes, sir.

Congressman MEEDS. I am sorry, but I didn't hear that response.

Mr. STRONG. Yes, sir, they were. All those leases that are operable on the reservations are approved by the Department of the Interior.

Congressman MEEDS. I mean the first part about the Quinaults. I didn't hear that.

Mr. STRONG. The Quinaults—let me back up and say that some of those things that are said in there about the resources being exploited, speak to mineral resources—specifically coal resources. The deficiencies in the manner in which the Bureau of Indian Affairs manages the forests is another area in which tribes lose tremendous amounts of money.

Congressman YATES. Your language says "return a mere pittance to their Indian owners." Now, you have all this listed?

Mr. STRONG. Tribes?

Congressman YATES. Yes. Facts are what we are looking for. This would indicate that throughout the whole United States where there are Indian tribes with resources—Indian timber, minerals, water—all these things are being exploited in favor of non-Indian enterprises, and the Indians are receiving a pittance.

If this is true, there ought to be an indictment of the people in the Department of the Interior.

Mr. STRONG. That is right.

Congressman YATES. I have a feeling that there has been in coal leases. For example, I know about the coal situation in Montana. Coal leases were entered into some years ago, and under what coal brings today those leases are not compensatory—they are not fair.

I don't know whether it was fair at the time they were entered into. Now, I don't know whether this is what you have in mind. Are you saying conditions have changed? Or were they unfair at the time the leases were granted?

Mr. STRONG. The conditions were unfair. The stuff that I was able to find through the General Accounting Office reports and through task force No. 7's reports, all indicated that the conditions in which tribes were living are unfair in negotiating or at least for exploitation of their resources.

They end up in negotiations with the mineral exploiting companies, without any kind of technical expertise, they end up without being able to sustain themselves for long periods of time without giving in because they don't have the money to say, "No; we don't want to exploit our resources."

Those kinds of unfairness are things that have been identified by two different investigative bodies.

Congressman Yates. How prevalent is that? Is that the rule or the exception?

Mr. Strong. The General Accounting Office identified one exception. It was the Osage Tribe.

Congressman Yates. When was the report of the General Accounting Office?

Mr. Strong. March 16, 1977.

Congressman Yates. This year?

Mr. Strong. Yes.

Congressman Yates. I haven't seen it.

Mr. Strong. I have—on page 68 of the report——

Congressman Yates. What does the main theme of the report say?

Mr. Strong. The gist of the report is that—well, let me summarize it for you, somewhat. The GAO went into looking at the portion of the contracts for receiving royalty payments on time, whether or not the tribe was receiving the money or the BIA or the U.S. Geological Survey were asking for the moneys to be received on time.

If they haven't been received on time, whether or not they were getting late payments or late interest charges on them, the amounts of money that were lost that have been identified by the General Accounting Office is terribly severe.

In a 14-month period on one of the reservations the GAO identified $270,000 in royalty payments that were 1 to 11 months late.

Congressman Yates. Are you telling us that your conclusion, as I have read it, is sustained by the General Accounting Office reports?

Mr. Strong. That is correct.

Congressman Yates. Well, why don't you say that the General Accounting Office points out in its report, dated such and such a day, that this is what is in there.

Chairman Abourezk. Have you said that?

Mr. Strong. I have on page 65, in the report to the Senate Committee on Energy and Natural Resources.

Congressman Yates. Page 7–65?

Mr. Strong. Yes, sir. A lot of this stuff, perhaps, follows that statement, talks about the significance of the natural resources to the United States and how it relates to Indians.

Chairman Abourezk. In fact, I was just noticing, it is pretty well detailed right after 65.

Congressman Yates. Well, the things that I object to in your statement—I will concede, I will accept, if what you say is perhaps in certain instances is the universality in the statement.

I am not sure that it is universal. Should it not read "in many instances" rather than just saying "that it happens in every instance." Ernie has his hand up.

Mr. Stevens. I would say it was universal. It is a rule rather than an exception. It is always so. It is hardly ever not so both from the standpoint of the trustees of the companies. I don't know if they have it in there, but I read it—

Mr. Taylor. We do at page 7–28.

Mr. Stevens [continuing]. A study of the non-Indian person who owns property off of the reservation and an Indian person who has a lot on the reservation leased from these same persons and there was a very large difference in what they were getting paid on the lease.

The reason I put it so emphatically is you could fill 10 volumes. I wouldn't want to even judge, in general, the Bureau locals whom I think the Bureau employs. Maybe it is an ineptitude, maybe it's something else, but the Indians almost always get beaten.

Congressman YATES. Do you have a copy of that GAO report?

Mr. STRONG. I don't have it with me.

Congressman YATES. Would you get it, because if what you say is true I would think we would want to send out our investigating teams of our Appropriations Committee to really find out about these things. What you are saying is that the Federal Government is really being subjected to a tremendous potential liability.

Mr. STEVENS. In the coal areas, I don't have the exact——

Congressman YATES. Not only in the coal areas, he is talking about water minerals——

Mr. STEVENS. It was the same way when I was in the Bureau.

They had this beautiful picture which I wish we had in the book. It showed it in clearcut and then in the backdrop was the U.S. forest of the different shades of green and it is cut in the circle S. And that is true too.

Another thing, when I headed up the forestry branch in the Bureau—this is a mind boggler and I don't know if we have it in there but we should put it in there. I submitted some comparative literature when I was there. Internal Revenue said that a subsidy is a subsidy. In other words, when you get a tax writeoff that is money given to you. When I get money or services, that is money. And then what we said and documented was that non-Indian timber operations got more free money than Indian tribes from the BIA.

That is true and on that basis that is true.

Congressman MEEDS. Gentlemen, may I borrow this just momentarily? What percentage of the employees of the BIA are Indian?

Mr. STEVENS. Well, about 56 right now.

Congressman MEEDS. 56 percent?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. This also constitutes a pretty scathing indictment of the Indian people in the BIA doesn't it?

Mr. STEVENS. No.

Chairman ABOUREZK. Wait a minute, would you yield on that? I think you have to also add to that the percentage who are in policy-making positions.

Congressman MEEDS. All right. Let's have it.

Mr. STEVENS. Of the Bureau employees, there are approximately in the upper grades—there is a big to do about people like myself, and others, holding top positions with the Bureau and the Commission and all of that—but throughout the Bureau, and this was 1971, approximately 83 percent of the upper pay grades of GS-13 and up, are non-Indians.

Congressman MEEDS. Policy levels are appointed levels, right?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. Civil service in all——

Congressman MEEDS. No, no; policy levels are appointed levels.

Mr. STEVENS. Just for direction.

Congressman Meeds. That is what we call the plum book levels. Are those levels Indian or non-Indian?

Mr. Stevens. Those are Indians, yes.

Congressman Meeds. There have been many ripoffs of Indians in this country in the past, through the BIA and everywhere else.

Congressman Yates. But he is not saying the past——

Congressman Meeds. Well, that is why I said the past. I assume there are some going on right now. But, Ernie, I disagree with the universality of your statement. I agree wholeheartedly with Mr. Yates and I think that it is too broad a statement.

For instance, turn to page 7–55—you can turn to almost any page of this report and do the same thing—but the second to the last sentence, "that ruling placed the Indian rights at the mercy of aggressively anti-Indian State courts."

Now, there are aggressively anti-Indian State courts. But what you are saying there is that all State courts are aggressively anti-Indian, and I don't agree with that. One of the major objections I have to this, Mr. Chairman, is the overemphasis on past wrongs.

Again, I agree that there has been a lot of wrongs in the past, and I agree there are wrongs now, but to have a blanket indictment of this Government, of this society, as being blatently anti-Indian, aggressively anti-Indian, or as totally ripping off the Indian people, I think, is an overstatement. This is one of the reasons why I disagree with this report.

Mr. Stevens. I would like to say something else here. I don't want you to lean too heavy on the Bureau employees. One of the problems that they have is very fundamental. They primarily look on themselves as administrators, and what is needed is technicians. I really don't want to oppose the Bureau because the Bureau gets enough stuff dumped on them. They are short of specific technicians.

We had a fellow, from our firm in Los Angeles, go to the Phoenix area office and their staff. He asked for various shows of hands for specifics, like, "how many of you can put together financial management plans? How many of you can do a financial package?"

Finally one of them got up and said, "Wait a minute, we are not technicians. We are administrators." And I think that is the fundamental problem in the Bureau.

Now I want to add to that, on there, and I would yield to some degree on that. I think we need to say that because it is very important. In the Bureau's case, in some of the personnel, it is not so much criminal as it is being inept.

Congressman Yates. Mr. Chairman, if you are going to ask for approval on chapter 7, I would have to reserve because I haven't had enough time to read it nor have I been able to read the human resources document that has been handed to me because it is not printed and I would have to reserve on that too if you propose to finish today. But I will say this: I want to read chapter 7 and that is kind of tough too because of the printing.

I want to read it because if what you say is true in there, we ought to be having oversight hearings in my committee. There ought to be hearings going on in the legislative committee to try to correct this kind of a situation. I wasn't aware that it was as bad as you say it is in this report.

Now that is why I want to read the report thoroughly. We will have to do something about it. I want to send a copy of it to the Secretary of the Interior, and we will send a copy of it to the acting head of the BIA. I think we ought to do something about it immediately.

If that is a universal condition, it ought to be corrected at once. If you want to take a vote on it, it is all right with me, but I will have to reserve, Mr. Chairman, on that.

Commissioner Whitecrow. Mr. Chairman.

Chairman Abourezk. Yes?

Commissioner Whitecrow. I, too, would like to reserve my vote on this chapter 7. I am not happy with chapter 7 at all—I can't read it. I am not happy with the approach on investment capital and I am not happy with some of these comments whereby we are totally condemning this entire country whereas we should be especially pleased according to specialized situations.

I come from an area whereby I know that we have good relationships with the non-Indian populus, and I would like to get their support on this report. Whereas, if we condemn them totally, very definitely we cannot expect their support.

I would like to reserve my vote on the approval or disapproval of chapter 7.

Congressman Yates. Let me say, Mr. Chairman, that it may be true. I just don't know. But I do want to have the opportunity of reading it carefully because it does contain very, very serious charges.

Chairman Abourezk. All right; that is fair enough. I am just trying to check to see when we can schedule this again. How are you on Monday?

Congressman Yates. Well, I will read it over the weekend. I will be glad to, but I would hope that the staff would be able to give us something that we can read. This human resources document we have received is totally unreadable.

Chairman Abourezk. I can almost assure you that you will have something to read by Monday.

Congressman Meeds. Mr. Chairman, what I am most concerned about, in addition to a copy I can read, is something that tells me what changes have been made. I read the first chapter 7—it wasn't chapter 7, then it was something else, I think. I read it and I had concerns that haven't been expressed here, but it was approved.

I really want to know what changes have been made so that I can decide whether it is better, or worse, or whatever.

Mr. Stevens. Sir, I think that if you can work something out on time, we can do something. This, for one thing, has been recorded as we went along. We can also compare the recommendations with the actual recommendations.

Congressman Meeds. I hope so.

Chairman Abourezk. All right. To give everybody enough time, let's set the next meeting then at 1:30 Monday afternoon. We will go over chapter 7 and then vote on final passage of the report.

Congressman Yates. Where are you going to meet?

Chairman **Abourezk.** Well, subject to the call of the Chair, we will have to find out where we can get a room. We will try to do it right here.

Congressman **Yates.** You can use my hearing room if you want to; it is located in the Rayburn Building.

Chairman **Abourezk.** Well, it doesn't really matter, but if we can meet in the Capitol, I think——

Congressman **Yates.** OK: that is good. Maybe I can get the Appropriations Committee room.

Chairman **Abourezk.** We will try that. If not, we will try to meet in this room.

Mr. **Stevens.** Mr. Chairman, I have got one problem. I would like to work it out ahead of time because——

Chairman **Abourezk.** Work what out?

Mr. **Stevens.** Well, I have a specific problem because we need to deliver something in better condition. It isn't the kind of thing that we can just go back and give back to you this afternoon. And so I need to——

Chairman **Abourezk.** Get back what to us?

Mr. **Stevens.** A copy or something.

Chairman **Abourezk.** Yes; we would like copies this afternoon.

Mr. **Stevens.** Well, that is the problem. What I am saying is if you can give us until tomorrow afternoon—but if you say bring it back this afternoon, I can't do that.

Congressman **Yates.** How are you going to get it to the Commission if you haven't?

Mr. **Stevens.** That is what I am stating is the problem.

Congressman **Yates.** Why don't you have the meeting on Tuesday then and give it to us——

Chairman **Abourezk.** We have to turn it in on Tuesday.

Mr. **Stevens.** The staff people have been up night and day all week. The remarks are well taken, but we cannot do it any better.

Chairman **Abourezk.** All right. Let's work it out this way. See if you can get copies of chapter 7 to everybody tomorrow afternoon. Would you now find out where Congressman Yates lives, where Congressman Meeds lives, and where the Commissioners will be staying?

Congressman **Meeds.** It is not necessary to deliver a new chapter to me. All I want is where the changes have been made.

Chairman **Abourezk.** Can you do that?

Mr. **Stevens.** Yes, sir.

Chairman **Abourezk.** All right.

Congressman **Yates.** What is the arrangement? Will we get these tomorrow?

Chairman **Abourezk.** They will be delivered to your home. I assume you are going to be in your office——

Mr. **Stevens.** Tomorrow?

Chairman **Abourezk.** Yes. Tomorrow is Saturday.

Congressman **Yates.** Depending on when. If he says tomorrow afternoon—I am not going to the office tomorrow afternoon. As a matter of fact, I am going to Nancy Harris's funeral service.

Chairman **Abourezk.** Here in town?

Congressman **Yates.** Yes.

Chairman **Abourezk**. In other words, if they deliver it to your home you will have it.

Congressman **Yates**. Yes; they can always leave it at the desk.

Mr. **Stevens**. One more, sir. Will you grant us the discretion to change the language the other way? In other words, what I would like to do is, in our own judgment—we have a lot of this documented—and in our own good judgment to be very careful about what we say——

Congressman **Yates**. You have got to be careful.

Mr. **Stevens**. All right; but if it is justified on one count, then we want to hold with that. If it is not on another, then we want to take it out.

Chairman **Abourezk**. All right; because we have got to pass on it anyway.

Mr. **Stevens**. Yes, sir.

Congressman **Yates**. The only thing I want to point out, when I expressed what seemed to be an exclamation as to the universality of that statement—what that statement says as it appears now is that everywhere this is going on—I just can't believe there aren't some good leases.

Mr. **Stevens**. Do you know where they are? They are the exception.

Congressman **Yates**. That is what I pointed out.

Mr. **Stevens**. What you are saying is that 1 percent of them are good leases.

Commissioner **Dial**. Mr. Chairman, there is no way he can say what percent are good leases and what percent are poor. I think if he points out that in many instances this is taking place, that is different language.

Congressman **Yates**. I would be willing to accept that, Adolph. I would be willing to accept a statement like that, but that is not what it says.

Mr. **Stevens**. I am saying in most instances—a majority—are certainly bad.

Commissioner **Dial**. The purpose of the Commission, and the reason this Commission is sitting today, is because such things exist throughout the country in every phase of Indian life.

Congressman **Yates**. Adolph, I would be willing to accept a statement that said in too many instances this is what has happened. It is going on today. I would accept a statement like that because that is not a universal statement.

Commissioner **Dial**. I have been reading for several years and there appeared to be ripoffs everywhere.

Congressman **Yates**. I don't think there is any question about that.

Commissioner **Dial**. You can have as many Indians in the Bureau as you please but if you don't have one top heavyhanded fellow, they don't amount to very much. A non-Indian can pop the whip when Indian people can't pop a whip.

Chairman **Abourezk**. All right. Let me say it this way. Whatever the staff can substantiate with evidence, that is what they will say. If they can't, they won't.

Max has been arranging for delivery of the items to the Commission members, both congressional and noncongressional, so that they will be available to be read by the Commission members over the weekend. We will come back in at 1:30 p.m. We will notify you as to which room we will meet in.

Now, before we go—just a minute—you may want to wait until Monday to bring this up because everybody is anxious to get out of here.

Commissioner **Bruce**. It will only take 1 minute.

Chairman **Abourezk**. All right. I want to recognize Ada Deer.

Commissioner **Deer**. In a previous session we delayed our discussion and did not include in our report the chapter on the Maine Indians. In view of certain considerations that were brought up at that point I would like to bring it to the attention of the Commission and state that it is my feeling that we should include this chapter in the final report.

Congressman **Yates**. Which chapter?

Chairman **Abourezk**. It was a draft chapter on the Maine Indian situation.

Congressman **Yates**. Oh.

Chairman **Abourezk**. May I be recognized now, Ada, or do you want to say anymore?

Commissioner **Deer**. No.

Chairman **Abourezk**. I would like to speak against including anything on the Maine Indian situation in this report. The reason is that President Carter has appointed a mediator and he is attempting to bring the sides together to negotiate.

In addition, there are lawsuits pending all over the place. They haven't been filed yet, for the most part. I think that it would be a mistake for this Commission—we have not had an investigation—and without such an investigation I think it would be a serious mistake for us to include that in the report. I would, personally, be opposed to it.

Commissioner **Bruce**. Mr. Chairman, I am sorry to disagree. Does this mean that we are not willing to face that issue and that we are passing it by—we are not recognizing the problem of these people?

Chairman **Abourezk**. No.

Commissioner **Bruce**. Or what?

Chairman **Abourezk**. No; it means——

Commissioner **Bruce**. Will it be left out completely?

Chairman **Abourezk**. It means that if my position prevails—I don't know if it will—but it means that what we are doing is acknowledging that we have not had time to do an investigation because it came up late in the Commission's life. We were not able to allocate any funds for an investigation on it, and that there is an effort being made to mediate the situation and try to get it settled without lawsuits.

Politically it would be very bad for this Commission to stir the waters up where they probably shouldn't be stirred at this point anyhow.

Commissioner **Bruce**. But the question——

Chairman **Abourezk**. The question will be settled either in court or in Congress one way or the other.

Commissioner **Bruce**. But we did consider it, and we did listen to it. We did make a report of our own, but it doesn't show anywhere that we did this.

Chairman ABOUREZK. No; that is because we didn't decide on it, Adolph.

Commissioner DIAL. Yes. My feeling is that I stand where Tom Tureen stands, wherever he is, on the Maine issue because if he feels we should leave it off then I favor it. If he feels we should deal with it then I favor that.

Congressman YATES. Will you yield for a question?

Commissioner DIAL. Yes.

Congressman YATES. Isn't he an attorney for the litigants?

Chairman ABOUREZK. Yes.

Congressman YATES. And why would you want to take a position in accordance with the wishes of one of the attorneys involved in the suit? Suppose there was an attorney on the other side.

Commissioner BRUCE. Well, I respect his ability in the case, and I would be willing to go along with it.

Congressman MEEDS. Mr. Chairman.

Chairman ABOUREZK. Yes?

Congressman MEEDS. I would just like to ask a question. What was in the initial report about this?

Mr. TAYLOR. Mr. Meeds, essentially it was a factual recitation of the amount of land base that was under judicial examination by virtue of these lawsuits, the statutes upon which the suit was based, and a discussion of the legal theory. To my recollection, it did not take a position one way or the other on the merits of that legal theory.

It did make findings to the effect that the Maine congressional delegation, both the House and Senate, had introduced legislation that, in our estimation and evaluation, would have the effect of probably wiping out any claims for monetary damages or for property despite the fact the introductory language indicated that was not the intent.

Congressman MEEDS. Well, that was what I responded to and that was my recollection of what I responded to in the dissenting opinion. Are we now being told that that is not in the final report?

Chairman ABOUREZK. No; it is not in it. It never has been.

Commissioner DIAL. You haven't allowed it to be in it.

Chairman ABOUREZK. Let me ask Alan Parker what Tom Tureen's view is of putting something in the final report on the Maine question.

Mr. PARKER. I wish to address the Commission on this as chief counsel for the Senate Select Committee on Indian Affairs. We have been in contact with both sides and I would feel very comfortable in saying that both sides would prefer not to interject the material into the report at this time. That it would be to the benefit of a settlement, which would be to the benefit of both sides, not to upset what is now a delicate situation.

Commissioner BRUCE. Even though, down the road, it may have some real impact on Indian affairs in the future?

Mr. PARKER. I wouldn't agree that failure to include the discussion that was developed would have a negative impact on the right of tribes as a general proposition to assert those kinds of claims.

Congressman MEEDS. Mr. Chairman, I have just checked with counsel and my recollection is correct. It was part of the initial report which was circulated.

Mr. PARKER. It was circulated only to the Commissioners.

Congressman **Meeds**. Right.

Mr. **Parker**. Never publicly released.

Chairman **Abourezk**. Never publicly released except by somebody from the Maine delegation. It was not considered, it was not voted on, and, therefore, not included in the final report. It has never been voted on and never been included.

Mr. **Taylor**. In fact that action, or nonaction, was taken at the request of both the Maine delegation and——

Chairman **Abourezk**. And Tureen.

Commissioner **Dial**. That is right. That is what I am thinking of, Mr. Chairman.

Chairman **Abourezk**. Now, Ada, do you have a motion or do you want to——

Commissioner **Deer**. I wanted to bring it up for a discussion.

Chairman **Abourezk**. Oh, all right. Then, if that is all there is, we will see you Monday at 1:30 p.m.

The Commission will recess until that time.

[Whereupon, at 1:10 p.m., the meeting in the above entitled matter was recessed until Monday, May 16, 1977.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

MONDAY, MAY 16, 1977

AMERICAN INDIAN POLICY REVIEW COMMISSION,
Washington, D.C.

The Commission met, pursuant to notice, at 3 p.m., in room B-306, Rayburn House Office Building, Senator James Abourezk (chairman of the Commission) presiding.

Present: Senator James Abourezk, chairman; Congressmen Lloyd Meeds, Sidney R. Yates, and Don Young; and Commissioners Louis R. Bruce, Adolph Dial, John Borbridge, Jake Whitecrow, and Ada Deer.

Staff present: Ernest L. Stevens, staff director; Alan Parker, Peter Taylor, and Tony Strong.

Chairman ABOUREZK. We now have a reporter, so we can go on the record.

Sid, do you want to continue?

Congressman YATES. We were on 7-4.

Chairman ABOUREZK. There was a motion by you to delete a couple of paragraphs on 7-3.

Congressman YATES. Do you want a formal notice?

Chairman ABOUREZK. Let the record show that a quorum is present and has been present since the beginning of the meeting, and that we have undertaken informal discussions in the absence of a court reporter.

However, we have not taken official action. We are now ready to proceed.

We are ready for your motion on page 7-3.

Congressman YATES. I move that the paragraph beginning "United States Federal transfers" on page 7-3 of the proposed Chapter 7. Economic Development, and ending with the words "self-sufficiency," and containing the chart, be stricken.

Chairman ABOUREZK. Is there objection to that motion?

[No response.]

Without objection, the amendment is agreed to. The motion to strike is agreed to.

There were some other minor editorial changes which, without objection, will be approved.

Congressman YATES. I would hope there would be a revision of the language on page 7-4 immediately above "Indian people can regain."

Chairman ABOUREZK. I do not know what the thought behind that was, actually, Mr. Yates. I thought we would have staff review it.

Mr. TAYLOR. I have some amendatory language. The first sentence would say, "Although absolute productivity," the word "absolute" is inserted, "on reservations has increased, the bulk"—to replace "large majority"—"of transfers has resulted in a reduction of relative productivity in relation to total income in Indian communities."

Since I am not an economist I had to have it explained to me. I would follow that sentence with another sentence.

"In other words, the rate of increase in expenditures by the United States has exceeded the rate of increase in reservation productivity."

Chairman ABOUREZK. I thought you were talking about this, "geared toward developing a self-sufficient economy."

Congressman YATES. What he said has to be said, Mr. Chairman. If you want to return to the previous paragraph, it is all right with me.

Chairman ABOUREZK. Without objection, we shall agree to the modification which Pete just enunciated. Do you have that now?

Mr. TAYLOR. Yes.

Congressman YATES. Why not finish this paragraph and go back to the previous one?

Mr. TAYLOR. I have no other corrections until the last sentence——

Congressman YATES. Would you defer? Let's look at the third line. Should not the word "could" be changed to the word "might"?

Mr. TAYLOR. Yes.

Congressman YATES. We do not know what would have happened. That is pure speculation. "This situation might have been averted" rather than "could have been averted."

I do not understand the last sentence.

Mr. TAYLFR. I made a revision in that sentence so it would read as follows: "The continuation of policies which lead to such conditions does not lend itself to investment opportunities."

Chairman ABOUREZK. Is that satisfactory?

Without objection, that change is adopted.

Congressman YATES. All right.

Chairman ABOUREZK. Now you want to go back to the first paragraph, right under the chart, on page 7–4.

Are you satisfied with that, Sid, or do you want to change it?

Congressman YATES. I am not sure I understand the last sentence in that paragraph. We were discussing it. We came to certain conclusions with regard to the Indian people's need to develop sufficient education. I am not sure we are in agreement on that because I think the Indian people can use more lawyers, more accountants, more doctors, and more people with advanced degrees. I gathered the impression he does not agree with that.

Congressman YOUNG. What is happening is that economic self-sufficiency means development of natural resources on the lands they have and will have. The reason they are economically deprived is that they have to go outside that field to get the expertise and sometimes they are fleeced. We do not have the capability to do right now what should be necessary.

Congressman YATES. We agree that the resources have to be developed. The question is how the development of the resources will be protected and who they need.

Hearings I have had before my subcommittee indicate that Indian people now do not have accountants, lawyers, or economic experts. They have to go outside in order to get them.

Congressman YOUNG. They also do not have the nuts and bolts capability.

Chairman ABOUREZK. Agricultural people, cattle feeding experts, or timber experts.

Congressman YOUNG. They do not have them.

Congressman YATES. Let's put that in, then.

Mr. STRONG. I have some clarifying language.

Mr. PARKER. The sentence beginning "This is encouraging," I would substitute "These figures are encouraging."

The next sentence would read, "If additional opportunities for education and training in such fields as natural resource development and business management are provided, Indian tribes would have an increased capability to develop a self-sufficient economy." Then scrap the remainder.

Congressman YATES. OK.

Congressman YOUNG. All right.

Congressman YATES. I will accept that.

Chairman ABOUREZK. Without objection, that amendment is agreed to.

Mr. TAYLOR. I have gone through 7-5 and 7-6 and made notes.

On the second line, page 7-5, a sentence which starts "This following section," I changed "this" to read "The following section."

The second paragraph on that page is duplicated further down so we just took out that entire second paragraph beginning, "Indian people, not Federal agencies." That paragraph would be deleted.

Chairman ABOUREZK. Very well.

The paragraph which begins "To develop, Indian people must move towards," take out the "s" at the end of the word "towards."

Further down we have another sentence which states, "self-reliance will not mean scorning all Federal assistance," I would put a "period" there, strike the words "only using," and the next sentence would then read, "It does require effective and wise use of that assistance."

Back up at the top of that paragraph, "To develop, Indian people must move toward stepping out," make it easier. Say "Indian people must begin to step out of the dependency relationship."

"Must move away from the dependency relationship." That is better.

Congressman YATES. All right.

Chairman ABOUREZK. Any other changes on this page?

Commissioner DIAL. What about "Indian people must be the ones"? Why not say, "Indian people must"——

Mr. STRONG. We deleted that entire paragraph. It is repeated elsewhere.

The last note I had on this page is on the next to the last line. There is a sentence which states, "There is an essential theme." The question is whether the word "that" should be replaced with the word "which."

Chairman ABOUREZK. It does not matter.

Congresman YATES. In the fifth line from the top, "In their struggle to develop their resources for themselves," make "these" "their."

Mr. **Strong.** I say, rather than "for themselves," "by themselves." If we say "for themselves," it means they use the resources for themselves as well. I meant Indian people would develop resources by themselves for whomever will use them.

Congressman **Yates.** Why not say "by and for themselves"?

Mr. **Strong.** OK.

Chairman **Abourezk.** Do you have all the changes?

Mr. **Taylor.** Yes.

Chairman **Abourezk.** Is there objection to those changes on page 7-5?

[No response.]

Without objection, they are agreed to.

Mr. **Taylor.** On page 7-6, first line at the top of the page reads, "Over their resources land, water, minerals, timber, fisheries, et cetera." Strike the word "to" and insert "and they must be responsible for all decisions as to their use and development."

On the fourth line down, the use of the word "control," I would substitute the word "establish." The sentence would read, "For a tribe whose goal is self-determination every goal should be evaluated on the tribe's ability to establish a meaningful development process."

Under the subnote there, "the Federal rule"——

Mr. **Strong.** "Federal rule" should be "Federal role."

Mr. **Taylor.** In this first paragraph under the Federal role I have made substantial changes. In fact, I changed the next two paragraphs.

The first sentence starts, "In viewing these characteristics as fundamental." I have broken up the sentence and would suggest the following changes:

The first sentence would read, "The policy changes discussed above must be viewed as fundamental." "The Federal role must be to provide those essential elements needed for economic development."

Congressman **Yates.** I have "The Federal law should provide a favorable climate," and so on.

Chairman **Abourezk.** He is changing the entire thing, Sid.

Congressman **Yates.** It is the same thing. I sort of simplified it a little. "The Federal role should be to provide a favorable climate for economic development."

Chairman **Abourezk.** I am sorry. I thought you were reading it back. I apologize.

Congressman **Yates.** I was amending his amendment.

Commissioner **Whitecrow.** "Policy changes cited above are fundamental"——

Mr. **Taylor.** It would now read: "The Federal role must be to provide a favorable climate for economic development."

The next sentence, I would strike the two words "these provisions" and substitute "This policy must be expressed." Strike out the words "not only." It should be "This policy must be expressed in terms of drastically increased appropriations for capitalization of necessary"——

Congressman **Yates.** Why not "through"?

Mr. **Taylor.** "Must be expressed through."

Congressman **Yates.** Put the word "and" there.

Mr. **Taylor.** So we are amending the sentence, then, on the line beginning "systems, and by alternative means for acquiring capital resources."

Congressman YATES. Right. Do you need "for example"?

Mr. TAYLOR. The sentence following says, "For example, this may be accomplished." I have stricken that all the way to the word "new." The sentence starts, "New Indian mechanism, i.e., develop financing mechanisms, e.g., development banks." Check that.

"And investment procedures must be established," strike the words "by encouraging"—"must be established and development of basic skills and technologies must be fostered."

Congressman YATES. And what?

Mr. TAYLOR. "Development of basic skills and technologies must be fostered," so that the words "transfers of" would be stricken, and the last three words there, "tribal governing activities," would be stricken.

The sentence continues: "New Indian financing mechanisms (e.g., development banks) and investment procedures must be established and development of basic skills and technologies must be fostered to enhance the capacity of developmental functions on Indian reservations."

Congressman YATES. Very well.

Chairman ABOUREZK. Can you strike "to enhance the capacity of developmental functions"?

Is there objection to those changes already discussed?

[No response.]

Without objection, they will be adopted.

Commissioner WHITECROW. Are we striking up to "to enhance"?

Chairman ABOUREZK. I have moved to strike those words. I think you can end it with the words "technologies must be fostered."

Mr. TAYLOR. The last change I had is in this next paragraph. The second sentence I would strike entirely. I do not think it is necessary. I think we have already covered that.

Chairman ABOUREZK. Which one is that?

Mr. TAYLOR. The sentence which reads: "They will be discussed in terms of what is necessary for maximum fulfillment of tribal goals of self-sufficiency through economic development."

Chairman ABOUREZK. Without objection, that will be stricken.

Mr. TAYLOR. I think that ends the area where major editorial work was required.

Chairman ABOUREZK. I think there is another one where it states: "The analysis contained herein is based on comments from across the country and, we believe." We should say, "and it is believed." We have not spoken in the first person in this report as yet, have we?

Mr. TAYLOR. Very well, sir.

That concludes the editorial changes.

Chairman ABOUREZK. What about page 7? Have you gone through that?

Mr. TAYLOR. That takes us into the area where Commissioner Borbridge said he has one or two corrections.

Commissioner BORBRIDGE. Mr. Chairman, just a matter of style solely. On page 7-7, fourth sentence down, why not simply say, "The allotment policy contained"? The word "contained" would replace the word "represented."

Chairman ABOUREZK. How about the sixth line down, "to break up the tribal communal land base"? Just say "The tribes'." Is that all right?

Mr. TAYLOR. Yes.

Chairman **Abourezk.** I do not understand the last paragraph:

> This ambivalence of the United States Government and the general refusal of the American people to recognize that Indian tribes are not going to disappear.

Mr. **Taylor.** It relates to the shifting policies described in the preceding paragraph.

Chairman **Abourezk.** "This ambivalence" is clear, but how about "the American people to recognize that Indian tribes are not going to disappear"? When did they recognize that?

Mr. **Taylor.** An allusion to current attitudes which seemed in many instances directed to the idea that eventually Indian tribes still will disappear. It is an attitude of local communities, one of a denial of tribal existence as governments on an assumption that they simply will become assimilated into the mainstream of America.

Chairman **Abourezk.** This states the American people refuse to recognize—four negatives are contained.

Mr. **Taylor.** A correction in the sentence is in order. Could we say: "This ambivalence of the U.S. Government has taken a very heavy toll over the years."?

Chairman **Abourezk.** I think so. It would be much better than trying to explain the other.

Is there objection to changes on that page?

[No response.]

If not, the changes are agreed to.

Commissioner **Dial.** What about the last paragraph on page 7-7? Why not say: "By 1887, with the passage of the General Allotment Act"?

Chairman **Abourezk.** That would be better. Is there objection to that change?

[No response.]

Without objection, it is agreed to.

I do not think we can sit as a Commission and continue to go through a line-by-line editorial policy.

Commissioner **Dial.** No; we cannot.

Chairman **Abourezk.** I think what we shall ask the staff to do is to go through this and make only editorial changes—no substantive changes.

Mr. **Taylor.** Right, sir.

Chairman **Abourezk.** What about the recommendations in this chapter? Do you want to direct us to that, please?

The only recommendations we have not yet approved are the human resources section. Is that correct?

Mr. **Strong.** Essentially.

Chairman **Abourezk.** Have we approved any of the recommendations in this chapter?

Mr. **Taylor.** I do not think we have.

Chairman **Abourezk.** Let's start with the recommendations, then.

What page are we on?

Mr. **Strong.** Page 7-17.

Chairman **Abourezk.** For the purpose of uniformity, the staff should put all the recommendations in the back of the chapter—or is it at the beginning?

Off the record.

[Off the record.]

Chairman ABOUREZK. Have all the recommendations in one group at the end of this chapter.

Mr. STRONG. Take them from where they are now and transfer them? Take them out?

Chairman ABOUREZK. Do you want to discuss your first recommendation?

We did not vote on any of the recommendations of this chapter.

Mr. STRONG. I was not aware of that.

Chairman ABOUREZK. We did not mark it up nor vote on it. We will have to vote on the whole chapter ab initio.

The first set of recommendations appears on 7-14. Does anybody have any questions or comments on those recommendations?

I refer to page 7-14.

[No response.]

If there are no questions, without objection, this first set of recommendations beginning on page 7-14, ending on 7-16, is adopted.

Commissioner WHITECROW. I have no objection but I have a question with regard to the interest rate as reflected in recommendation No. 1.

Chairman ABOUREZK. What is the question?

Commissioner WHITECROW. Would it not be more advantageous to this recommendation if we would perhaps make a suggested interest rate, or would we be in violation of other interest rate schedules?

Chairman ABOUREZK. I think, personally, it would be a futile act because it will be set in whatever legislation, and perhaps set according to the existing market rate. That is the way it is done around here, anyway, as far as legislation is concerned. Therefore, I do not think it would be very valuable to do that.

Congressman YATES. The basic authorization has expired. I know there was none in the House Appropriations Committee.

Congressman MEEDS. It is now in the Indian Financing Act.

Chairman ABOUREZK. That is right.

Congressman YATES. My staff says authorization has expired. There has been no request for appropriation by the Office of Management and Budget. BIA does not ask for it but OMB does.

Chairman ABOUREZK. It is controlled by BIA.

Mr. TAYLOR. The answer may lie with passage of the Indian Financing Act of 1974 and its additional funds. I believe the funds provided in that act and the 1934 revolving loan fund were merged and administered.

Congressman MEEDS. They were merged. I do not know how they were administered.

Congressman YATES. The insurance fund expired. There is no money requested for it this year. That does not mean it should not be requested.

Chairman ABOUREZK. On what page is the next set of recommendations?

Mr. STRONG. Page 7-31.

Chairman ABOUREZK. Are there any questions or comments on the agricultural recommendations?

[No response.]

If not, without objection, those recommendations will be adopted.

What is the next set?

Mr. **Strong**. Page 7–46, on timber.

Chairman **Abourezk**. Are there any questions or comments with regard to the recommendations on timber?

[No response.]

If there are no objections——

Congressman **Yates**. I have a comment to make and I would like the advice of the group here. BIA timber policies have been so bad with respect to Indian timber resources that I am thinking of recommending that the U.S. Forest Service take care of it rather than letting BIA do it.

Congressman **Meeds**. Forest Service hasn't done that good a job, either.

Chairman **Abourezk**. Do you mean technical assistance from the Forest Service?

Mr. **Strong**. Why can't we allow the tribes to contract from the Forest Service rather than BIA?

Congressman **Yates**. Or private sources.

Chairman **Abourezk**. Is that in this recommendation?

Mr. **Taylor**. The recommendation alludes to tribal development of timber management programs which would be supported with tribal moneys.

Congressman **Yates**. Can we put that in there?

Chairman **Abourezk**. Why not add a specific recommendation that Congress should pass legislation to enable the tribes to contract management of their timber resources, whether to the U.S. Forest Service or private forestry companies?

Congressman **Yates**. Government agencies or outside private concerns.

Do you need special legislation for that? Can't they do it now?

Chairman **Abourezk**. We already have that. Public Law 93–638 will permit them to do that.

Mr. **Taylor**. I think our recommendations in the first recommendation shown, amendment of existing law, will help facilitate that problem.

Chairman **Abourezk**. Is there objection to that amendment?

[No response.]

If not, it is adopted.

Commissioner **Deer**. There is some relationship to the trust concept here in terms of timber. I wouldn't feel comfortable in voting on this at this particular point without some additional information from counsel.

I know we have had continuing discussions with the Bureau on this in terms of managing timber ourselves. It relates to the trust concept and their perception of it.

I wonder whether any counsel can comment on that.

Mr. **Parker**. This points to the existing regulations under the Indian Self-Determination Act. There is a difference between services not related to management of trust resources and those directly related to management and trust resources.

With respect to the latter, the position of the Bureau is that they can go only so far in contracting. They have to maintain basic control. Otherwise they would be abrogating their trust responsibility, in effect.

The narrative does not go into the details of exactly how that would be changed but our committee has announced oversight hearings on Public Law 93–638. That is one of the issues we have identified on which we hope to receive testimony from the administration and Indians.

However, in response to your question, I would think that the recommendation as stated would not call for any waiver of the trust responsibility.

Mr. Stevens. One of the things not in the report is this: We had difficulty in figuring out a way to say it. The responsibilities in the trust, like accountability for government funds and so on, are things that should be minimum requirements.

Chairman Abourezk. Constants all the way through?

Mr. Stevens. They should be minimum requirements and people should know what they are. They should be addressed as to accountability in such a way so that if you know what the minimum is right across the line, then there is no reason that you could not contract out these things as long as you report them out.

Chairman Abourezk. That is understood.

All right. Next is page 7–46, recommendations on water.

I think that first recommendation has to be changed somewhat. All forms of water usage on or adjacent to the reservation, where the tribes have legal control over the water.

Don't you think that would be more accurate?

"Where such tribe has legal control over that water."

Congressman Yates. "Tribes having control over the water to develop their own water usage should allow the tribes having control over their water to develop their own water code," and so on.

Chairman Abourezk. Then it reads: "The Secretary of Interior"—strike the word "should"—"The Secretary of Interior allow the tribes having control over waterways to develop their own water codes designed"—strike that "would be"—"designed to regulate all forms of water usage on such waterways" and strike "on or adjacent to the reservation."

Congressman Meeds. What if the waterways are off the reservation?

Chairman Abourezk. If the tribes have legal control over them, then they can write a code for them.

Congressman Young. "Waterways" is a definition I will have to ask counsel for—define not water as a body only but use of water.

When you get into the word "ways," you get into a legal connotation other than "water code," "water usage" and that kind of thing. You can ask counsel.

Chairman Abourezk. I think we can say "legal rights to such water."

Congressman Young. Waterways goes into legal determination.

Congressman Yates. What about legal rights? They might have minor legal rights. Suppose they share legal rights with outsiders with a slight interest?

Chairman Abourezk. Can't they develop a code according to the rights of the water they have?

Congressman **Yates**. Outsiders have to have participation, too.

Chairman **Abourezk**. But if the tribes are entitled to rights over part of the water, can't they develop a code for that part for their own usage?

Congressman **Yates**. That portion of it over which they have rights.

Chairman **Abourezk**. That is what we are saying.

Congressman **Yates**. I don't know the answer to this because I don't know the question about water. Can you let a tribe establish a water code over water it shares with others?

Chairman **Abourezk**. Over its portions, certainly. It is not binding on anybody else. If they don't have rights on other waterways, then whatever code they make is not binding on them.

Congressman **Yates**. If they have a limited proprietary interest in a body of water of any kind: Does their attempt to establish a water code for their limited interest affect the other owners? I don't know. What does counsel say?

Mr. **Taylor**. What you are getting into is the *Winters* rights doctrine. Tribes under that doctrine have a rather open ended use interest in the waters which flow either through or past the reservation.

Congressman **Yates**. What does the phrase "water code" mean, though? Is it a series of regulations as to the use of the water?

Mr. **Taylor**. Yes; and the allocations of its use.

Congressman **Yates**. If others share it: Can they make such a code?

Mr. **Parker**. Particularly in the western States, the whole appropriation system requires Government regulation. We are not the governmental entity exercising regulatory authority.

Congressman **Yates**. This proposes taking it away from them.

Mr. **Parker**. Proposes to confirm it with respect to water over which they have rights.

Congressman **Meeds**. I think the latest case is relatively clear with regard to the rights of the *Winters* doctrine. It is a right which is acquired by Indians through the Federal Government, not an inherent right to water.

Mr. **Parker**. There is a difference of opinion.

Congressman **Meeds**. But the latest case, in effect holds that.

Mr. **Parker**. Which case?

Congressman **Meeds**. The *Aiken* case.

Mr. **Taylor**. We have a recommendation here dealing with the *Aiken* case.

Congressman **Meeds**. You may disagree with the *Aiken* case, as I disagree with some of the other cases, but the *Aiken* case does say that.

Mr. **Taylor**. I think it implies it. It cannot be supported without such a conclusion. I think the legal term is sub rosa.

Mr. **Parker**. Obviously, attorneys for the Indians are seeking interpretations of the *Aiken* decision which would confirm the original *Winters* theory of inherent right, and attorneys for the opposing side are seeking an interpretation to confirm the Federal nature of the right.

Congressman **Meeds**. The case rather clearly holds that the Federal right is carried to the Indians through that act. It is a Federal right and not an inherent right of the——

Congressman **Yates**. That has nothing to do with this.

Congressman **Meeds**. Somebody asked about water rights.

Congressman **Yates**. If the Indian tribe controls the water, it should be allowed to establish its own water code.

Chairman **Abourezk**. Is that what you are talking about?

Mr. **Strong**. Yes.

Congressman **Yates**. The only point I make, if it shares the water with others, what is your answer to that?

Mr. **Strong**. It seems to me they would be allowed to develop water codes in conjunction with those other users.

Mr. **Parker**. That seems to be the opinion of the majority group.

Chairman **Abourezk**. Does that state it clearly enough to suit everybody?

Without objection, then——

Congressman **Meeds**. I do vote against approval of that.

Chairman **Abourezk**. All those in favor of that amendment to that recommendation raise your hands.

Congressman **Meeds**. I have no objection to that.

Chairman **Abourezk**. That is what we are deciding.

Congressman **Meeds**. I vote for that.

Chairman **Abourezk**. Those in favor of the amendment, raise your right hands.

[Show of hands.]

Chairman **Abourezk**. That is unanimous.

Any other questions or comments on these recommendations?

[No response.]

Chairman **Abourezk**. If not, all those in favor of adopting the water recommendations as amended raise your right hands.

[Show of hands.]

Chairman **Abourezk**. Those opposed.

[Show of hands.]

Chairman **Abourezk**. Let the record show Congressman Meeds is opposed to the adoption of those recommendations.

The recommendations are adopted.

What page is the next recommendation?

Mr. **Strong**. The next set of recommendations are on mineral resources, page 7-80.

Chairman **Abourezk**. Any questions or comments on the mineral recommendations, page 7-80?

Congressman **Yates**. I have a question with respect to paragraph 1, which states that the results should be confidential to the tribes.

The question is whether or not the information can be denied under the Freedom of Information Act.

Congressman **Meeds**. We have amended the Freedom of Information Act to prevent that.

Chairman **Abourezk**. We have not yet passed it. It was proposed.

Congressman **Yates**. I tried to do it in my bill last year and was told that was amending the Freedom of Information Act and that I should take it out of the bill and they would put it into the Freedom of Information Act.

We say, "Results should be confidential to the tribes," and I assume that is merely a recommendation.

Chairman **Abourezk**. I imagine I can say, "provided FOIA can be amended accordingly."

Congressman **Yates**. Do we deal with the question of the proprietary rights of the Indians as not being available to the Freedom of Information Act?

Chairman **Abourezk**. I don't think so.

Mr. **Taylor**. I don't believe we do.

Congressman **Yates**. Should we not?

Mr. **Parker**. We can insert that.

Congressman **Yates**. I remember some question up in the Northwest.

Mr. **Taylor**. At least two task force reports make such a recommendation—mine was one of them—because of the complexity and magnitude of the present report, we did not get it in.

Congressman **Yates**. It should go in here. This is a question of Indian proprietary rights and its resources.

Chairman **Abourezk**. There is an amendment proposed by Congressman Yates to the recommendations: That the Freedom of Information Act be amended to exclude from that act proprietary information relating to the resources of Indian tribes.

Is there objection to the adoption of that language?

[No response.]

Chairman **Abourezk**. There being none, that is a new recommendation.

Any other questions or comments?

[No response.]

Chairman **Abourezk**. If not, without objection, these recommendations will be agreed to.

What is the next set of recommendations?

Mr. **Strong**. The next set of recommendations has to do with human resources, page 7-96.

Chairman **Abourezk**. Any questions or comments on the human resources recommendations?

[No response.]

Chairman **Abourezk**. If not, without objection, those recommendations are accepted.

The next one is on page 7-105.

Mr. **Strong**. That is right.

Chairman **Abourezk**. Transportation—any questions or comments on the transportation recommendations, page 7-105?

[No response.]

Chairman **Abourezk**. There being none, without objection, the recommendations are adopted.

Congressman **Yates**. "Congress appropriates such funds to upgrade the existing transportation mechanisms in the Indian communities." What does that mean?

Mr. **Strong**. Mechanisms meaning all those things necessary for movement within the reservation, whether it will be water, waterways, roads—essentially dealing with roads. Most of the discussion in the narrative deals with roads.

Congressman **Yates**. Does "mechanism" refer to roads?

Mr. **Strong**. "Mechanism" is meant to refer to roads.

Congressman **Yates**. To my mind a mechanism is something capable of moving.

Chairman **Abourezk**. Think of a different word. "Facilities"?

Mr. **Strong**. "Facilities."

Chairman **Abourezk**. Without objection, "facilities" is inserted as an amendment in lieu of "mechanisms."

The next recommendations are on page 7–113. Any questions or comments on these recommendations?

[No response.]

Chairman **Abourezk**. If not, without objection, the recommendations on page 7–113 are agreed to.

Page 7–117 is next.

Congressman **Yates**. Might I go back to page 7–113 for a moment? "Provide that the tribal government may waive its immunity from suit." What is the corollary to that? They can claim immunity; that they have immunity from suit?

Mr. **Taylor**. They enjoy sovereignty; yes.

Congressman **Meeds**. Even I would agree with that.

Chairman **Abourezk**. All right, page 7–117. Are there questions or comments with regard to the recommendations on page 7–117?

[No response.]

If not, without objection, that recommendation is adopted.

Enterprise development efforts—recommendation on page 7–121.

I certainly hope that you will spell out all these acronyms.

Mr. **Strong**. EDA is Economic Development Administration——

Chairman **Abourezk**. You don't have to tell us now. Do it in the report.

Mr. **Strong**. Surely. That was put together rather quickly.

Chairman **Abourezk**. I understand most of them. I don't know what DOL means.

Mr. **Strong**. Department of Labor.

Commissioner **Bruce**. Why is not DOT on that? I feel that is important today.

Chairman **Abourezk**. Put DOT in there.

Without objection, as amended, this is adopted.

On chapter 7, totally, I shall entertain a motion to adopt chapter 7 as amended.

Commissioner **Bruce**. I move it.

Congressman **Yates**. Seconded.

Chairman **Abourezk**. All those in favor of adopting chapter 7 raise your right hands.

[Show of hands.]

Those opposed.

[Show of hands.]

One opposed. The chapter is adopted. The record will show Congressman Meeds is opposed to it.

We do not need to take action on the separate views. They are separate views of individual Commissioners or groups. They will be inserted in the report as they are submitted.

Congressman **Meeds**. Might I be heard on that?

Chairman **Abourezk**. Yes.

Congressman **Meeds**. I want to speak a moment regarding separate views.

While it is general knowledge that I have disagreed with each of what has been adopted by the Commission—based on some differences of opinion with regard to sovereignty, jurisdiction, and things such as those—and while it is clearly true that anybody can say anything they want to in separate views, I would just say, and I do not intend at this time to reply in a surebuttal type thing, it was my understanding that the chairman would speak for the rest of the Commission in filing a rebuttal. Inasmuch as these are separate views and since I agreed anybody could say anything they wanted in separate views, I shall not reply to that.

I would like to state for the record, however, that the implications—and I deem it regrettable because I have not felt that the differences of opinion we have had had run to the depth of almost motivation—the fact that the chairman, I think, misunderstands my dissenting views when I say this is one-sided advocacy and talk about its being inevitable that some of the problems come from the fact that there was a large majority of Indian representation. This was not all directed to this Commission at all as implied here in the statement of the chairman. Indeed, I think this Commission has done a very good job.

However, if you will look very closely, you will see that it applied to the task forces—of the 33 people on the task forces, 31 were Indians. That is what the statement was directed to in that regard.

On page 4, where the chairman in his separate views indicates, and I am quoting, "In an effort such as this report, dependent upon cooperation and mutual respect, arguments which tend to rekindle the flames of racial mistrust strike me as exceedingly irresponsible."

Later on the same page, "Favoring Indians raises the spectre of racial antagonism and majoritarian domination which I hoped were buried forever in a shameful past."

I again think it is regrettable that there is even an inference by the chairman. If the chairman does get that inference, I feel badly that such an inference would come from me.

I think my record is so clear in the U.S. Congress on racial issues, and it is so clear with regard to support of Indian causes, and so free of bigotry, that I am deeply hurt that the chairman of the Commission, or any other person, would view my views as in any way, as the chairman says, "rekindle the flames of racial mistrust" or to "raise the spectre of racial antagonism and majoritarian domination which I had hoped was buried forever in a shameful past."

I hope, too, these things are buried forever. I hope it is clear that in my dissent there never, ever has been any effort by me, any intention by me, and as I say, if someone should be so unfortunate as to get even that inference, I hope that will be dismissed immediately because I have certainly never felt that way. I think the chairman understands that. I think everybody on this Commission understands that.

I would hope that my record in this field has not lent any credence to that kind of proposition.

Chairman Abourezk. Would you yield?

Congressman Meeds. Yes; I would be delighted to yield.

Chairman Abourezk. I have to be very honest. I have never in person, in talking to Lloyd Meeds or listening to Lloyd Meeds in person at a meeting or sitting down privately or publicly, ever heard nor have I ever seen a hint or indication that Congressman Meeds would want to stir up racial fires of any kinds. That is why I was totally surprised to read not only his dissent but several comments attributed to Congressman Meeds in the press.

For example, just a few days ago the statement in the Associated Press—it was in the Washington Star, there was an AP slug on it—stating "Under the Commission's report the Indians could take over Tacoma, Wash."

Congressman MEEDS. No, no.

Chairman ABOUREZK. Does anybody have a copy of that here? It was attributed to you.

Congressman MEEDS. I said, and I think the story accurately reflects, that under the recommendations of this Commission and the concept that this Commission takes with regard to sovereignty and jurisdiction, the Puyallup Indians would be able to assert civil and criminal jurisdictions over a large portion of the city of Tacoma. We discussed that in this Commission. I don't think any of the staff would disagree, that under the view taken in this recommendation that is true.

Mr. TAYLOR. I checked the record on that. The context of that discussion was that the question of sovereignty was an unlimited one at this moment. Tacoma was discussed specifically. It was agreed by staff and everyone present that if the tribe were to attempt to assert general tax authority or any kind of authority you are alluding to now, they would be terminated under congressional plenary power within 24 hours.

Congressman MEEDS. That is not the point. The point is that my statement is a correct statement of the effect of this Commission's views. No. 1, the Puyallup Indians could, indeed, because that area we were talking about, and we discussed that in this Commission, is so-called Indian country, and the recommendations and indications of the direction of this Commission report are that Indian tribes have and can exercise all the attributes of sovereignty which have not been taken from them by the Federal Government, by the Congress indeed, over Indian country.

Therefore, they could indeed assert jurisdiction over large parts of the city of Tacoma. What might happen from that, I don't know. I agree with you. That is what I said in my dissenting opinion—that the fastest way for Indians to lose their uniqueness was for Congress to implement all these views. The backlash would be sudden, quick, and decisive, and I agree it will be. That is one of the reasons I have disagreed.

I don't want to get into a long discussion. That is not an abrasive statement in any way.

Chairman ABOUREZK. I have to disagree. It may not be intended as such.

Congressman YATES. Can I get into this fight?

Chairman ABOUREZK. No. Whether or not it was intended as a racist statement, raising the spectre of Indians taking over a city which is predominantly white, at the time we discussed this matter nobody disagreed that the Indians are not trying to—there is no effort being made to do so—nor would they try to because it would be politically and perhaps even legally unrealistic. We agreed to that concept.

Now, at the time the final report is about ready to come out, to have the Vice Chairman of the Commission raise that kind of a spectre, of an "Indian takeover of a white city," to me smacks of trying to discredit the report through a number of devices.

Congressman **Yates.** I don't agree with that, Mr. Chairman. I voted with you on practically everything. I have read your dissent. I must say in all honesty I had intended to urge you to rephrase some of your dissent.

It is your privilege to file whatever you want to file. However, I really think Lloyd Meeds has been a very diligent and conscientious member of this Commission.

He has not agreed with a number of the conclusions that the rest of us have agreed to, but I think that as a result of his opposition to certain of the concepts that were under consideration that it served to help define some of the matters before us. I think it was constructive for that purpose. When he took issue with some of the aspects of sovereignty, I think he did it in a fair, reasonable, and legal manner.

His request for the appointment of a member of the staff, Mr. Martone, was helpful, at least helpful to me in my analysis of the issues at hand, which were very complicated. The question of sovereignty is a complicated subject. Questions relating to sovereignty still will be tried in the courts. We do not have precise answers to the concepts as yet.

It is perfectly proper for reasonable people to take different interpretations with regard to questions as complicated as these. It is for that reason that I am intervening where angels fear to tread and suggesting, with great respect Mr. Chairman, that I, for one, would urge you to reexamine some of the language you used and hope that you would acknowledge that some of the language is a little beyond what I think should go into the report.

Chairman **Abourezk.** Mr. Yates, if I may say first of all, when Lloyd proposed that a minority counsel—minority meaning minority views in this case—be retained, I immediately agreed to it without trying to delay it or fight it.

Congressman **Yates.** I remember that.

Congressman **Meeds.** Agreed.

Congressman **Yates.** As a matter of fact, I was opposed to it at the time because I thought it was too much money. It turned out to be helpful.

Chairman **Abourezk.** More than once I said on the record that I thought Fred Martone and Lloyd Meeds served a tremendous purpose in pointing out what they thought were imperfections in this report. You have to have that kind of thing. You cannot have a dandy thing where everybody goes along with it.

Congressman **Yates.** I think they will concede you were the fairest of chairmen.

Congressman **Meeds.** Indeed.

Congressman **Yates.** Having played that role is why I urge you now not to use this kind of language.

Chairman **Abourezk.** For Lloyd or anybody else to disagree with the concepts in the report is one thing. I think they ought to disagree. If they don't agree, they should say so.

Congressman **Yates.** OK.

Chairman **Abourezk.** But to try to attack the credibility of the Commission and its staff in the manner in which the dissent did so——

Congressman **Yates**. No.

Chairman **Abourezk**. If you read Lloyd's dissent, you will see it.

Let me give you one example right off the beginning. In the report, and in our discussions with the staff during markup, we said time and again that whatever jurisdiction the Indian tribes have is at the will of Congress. We said that continuously.

The first several pages of Lloyd Meeds' dissent attacked the concept. In fact, he says the same thing, only trying to lead the reader of the dissent to believe we say something opposite of what we said. It is at the beginning of his dissent. It is an amazing document.

Congressman **Meeds**. You have substantial disagreement about the degree of sovereignty, the nature of sovereignty as claimed by Indian tribes.

Chairman **Abourezk**. Where is a copy of the dissent?

Congressman **Meeds**. I have never disagreed that we could not be reasonable and disagree.

Some of this, it seems to me——

Chairman **Abourezk**. Let me just state——

Congressman **Meeds**. Mr. Chairman, I have the time. I yielded.

Chairman **Abourezk**. I have the time.

Congressman **Meeds**. I did not even finish my statement and I did yield.

Chairman **Abourezk**. Go ahead.

Congressman **Meeds**. The substantial disagreement we have had about the degree of sovereignty has been more than simply one of words. It has been a basic disagreement in the basic concept of this Commission—that sovereignty is inherent in Indian tribes, and that inherent sovereignty has never been abrogated except in its exterior practice and in those specific ways it has been infringed upon by a specific act of Congress.

My view is that all Indian sovereignty was abrogated, either by war, by treaty, or by subjugation, and that Indian tribes have only that sovereignty which is given to them by the U.S. Congress.

There is a vast difference in that. I think counsel would agree that that is the basic difference in the views.

Chairman **Abourezk**. Have you finished?

Congressman **Meeds**. I would be delighted to yield.

Chairman **Abourezk**. Are you done?

Congressman **Meeds**. I had a couple more points to cover.

Chairman **Abourezk**. Go ahead if you want to hold the floor.

Congressman **Meeds**. I will be happy to yield.

Chairman **Abourezk**. What I want is the floor as soon as you are finished.

Congressman **Meeds**. Let me just make the last point, then, before I yield completely.

On page 5, quoting again, "The big picture of Indian life which the dissent proposal paints for us would mark a return to the worst features of termination and allotment periods. Termination, of course, is not a goal explicitly articulated by the dissent, but that would be the sure and practical effect of implementing the series of proposals advanced by the vice chairman, eliminating tribal determination", and so on.

Let me again say that I think it is unfortunate that the chairman has interpreted my dissenting views in that way. Let me again state that I think my record is amply clear on this issue. I was the main sponsor of what I think laid termination to an end—the Menominee Restoration Act. I worked hard for its passage. I do not believe in termination. I believe the best course for Indian tribes in this Nation is to have internal government and to be allowed to be different. I have said in my dissent that this Nation is big enough and, hopefully, wise enough that it can recognize differences. I believe that very thoroughly.

I do not believe in a policy of allotments or terminations. I am violently opposed to it. Indeed, I would like to see, and again I say in my dissenting opinion, a method for recognizing Indians who are not now recognized federally, to have them recognized, have their tribal membership set so that they can also receive the fruits of treaties under which they entered. I have always been for keeping treaties.

I think it is unfortunate that after a record such as mine in the Congress that I should again be painted as a terminationist or being for an allotment policy.

If any of the Commissioners or anybody in this room or anybody reading this report thinks that is me, I hope they will be disabused.

I will be happy to yield the floor.

Chairman ABOUREZK. I see no purpose in my debating this. I think we should get to voting out the final report.

If I might now——

Commissioner WHITECROW. There is a point or two I would like to address inasmuch as we are talking about dissenting views.

Chairman ABOUREZK. Might I ask a question first?

Commissioner WHITECROW. Yes.

Chairman ABOUREZK. Can we try to vote on final passage of the report? I have other matters I have to attend to. The staff has to get corrections in and start printing them for the turnover tomorrow for presentation to the Congress.

Can we do that and then try to discuss some of these things which we cannot change, anyway?

Commissioner WHITECROW. I would be happy to.

Chairman ABOUREZK. They are in separate views.

Commissioner DEER. Before we had a reporter present we talked briefly about the situation this morning regarding the Passamaquoddy and Penobscot Indians.

I would like to bring this up for brief discussion because I think, over the weekend, there has been some change in their thinking.

You have before you chapter 12—special circumstances. It is my understanding there has been some change in the thinking of the counsel and the governors regarding the inclusion of this in our final report.

I would make the point, also, that there has been mention made in the minority report on this. I would like to call on counsel to enlighten us a little further.

Mr. PARKER. At the Friday session, Mr. Chairman, you will recall we discussed this. My response, at that time, was that based on the latest communication with counsel on both sides they were still of the view they would prefer not to have the material which had been offered earlier presented in the report.

I have since been in communication with the Passamaquoddies through their counsel. They are very anxious to have the Commission include a discussion of the Passamaquoddy-Penobscot land claim question which we have prepared as a five-page discussion intended simply to state the facts and which calls for Commission approval of the recommendations which are on the last page.

Chairman **Abourezk**. Once again, I am personally opposed to it on the ground we have not had any kind of a real investigation of this question.

To be very honest, I think the Commission has enough on its hands. We cannot even finish what we set out to do. We are having a hard time.

It would be a serious mistake for the Commission to enter into that at this point. I understand the feeling of some of the Commissioners. I want you to know that. I think it would be a serious mistake for us to jump into it without doing it thoroughly.

We have tried to do the best job we can on these other issues. Nobody ever will be satisfied with what we have done, I am sure.

Mr. **Parker**. The statement is intended as a factual discussion. It could certainly be inserted without recommendation.

Chairman **Abourezk**. I don't think there is any point in putting it in.

Congressman **Yates**. I agree with the chairman.

Congressman **Meeds**. For the reason that I based my dissenting views on a discussion of the Penobscot situation, and I think it is important, I think it should be part of the report. I don't agree with the conclusions, however.

Congressman **Yates**. I think there is litigation pending. The case will be tried in court. It is the practice of many of us in Congress not to try to move to influence either side. Let the case proceed impartially. For that reason I find myself in agreement with the chairman.

I recognize that the Commission is not a committee of the Congress. It can do anything it wants to do.

Traditionally, we have taken the position of avoiding trying to influence the course of a lawsuit.

Chairman **Abourezk**. I think, occasionally, we have gotten into areas of litigation but committees have thought twice before doing it. I think we should think twice.

If we do not have a recommendation, then there is really no point in putting a factual report in. People can read it in the newspapers.

Commissioner **Dial**. I see nothing wrong in including the factual information. It will not injure anyone. It does not say anything about our position.

Congressman **Yates**. How do you know?

Commissioner **Dial**. It only states we knew about it and looked into the matter.

Congressman **Yates**. How do you know it will not injure anybody? You don't know what the impact of this might be.

Commissioner **Dial**. How do you know it will if you do not put it in?

Congressman **Yates**. You have a better chance of not injuring anyone if you do nothing.

Commissioner **Dial**. I am not sure that is the case.

Congressman **Meeds**. Two quick points: No. 1, where we do not make any recommendations we do not have a title on that. I would be happy to go along with that—jurisdiction, sovereignty, and the whole discussion of tribal rights. There are no recommendations but a lot of facts, and a well-reasoned legal discussion of the basis for sovereignty, jurisdiction, and so on.

If the chairman wants to strike that, I will back off the Maine situation.

No. 2, Mr. Yates said litigation is pending. We are in a minefield of litigation in this entire report. We are dealing with water rights where there is litigation, taxes where there is litigation, fishing rights were there is litigation, dealing with resource development where there is litigation. It is all litigation surrounding this.

If we were to withhold our recommendations based on the fact there is litigation pending, we would not be able to publish one-tenth of what we have here.

Congressman **Yates**. Where in the report is there reference to pending litigation? Do we take any position with respect to any litigation pending?

Chairman **Abourezk**. I have a proposed solution.

Mr. **Taylor**. Several cases were cited. There are more in process.

Congressman **Yates**. I was not aware of that.

Mr. **Taylor**. Just stating the fact, cases have been decided in particular areas.

Congressman **Yates**. Decided—that is different. I am talking about pending.

Mr. **Taylor**. And are going through the appeal process.

Congressman **Yates**. Why take a position?

Mr. **Taylor**. I don't recall we took a position.

Chairman **Abourezk**. Why don't you put in, those of you who agree with that 5-page summary, as a separate view on the Maine question? I, personally, would have to vote against including it. I do not want to do that.

If you put it in in separate views, it would save my doing that.

Commissioner **Bruce**. I want to repeat what I said last Friday. I believe that we, as Indian Commissioners, owe it to our people to include the fact we did meet with the Maine delegation, and these facts were involved. I think counsel has prepared this report.

I would like to see the recommendations included, but just the fact that the facts are included and are part of the report is very important.

Suppose something happens in that instance that Congress supports a bill to wipe out claims? We are here to defend and support our people. I feel that by meeting with them, and knowing the facts, and discussing the facts, that this should be in the report.

I would be willing, as one Commissioner, to go along with not including recommendations, although I would like to see that.

Congressman **Meeds**. I know a quick way to decide this. I move chapter 12 be made part of the American Indian Policy Review Commission report and recommendations.

Commissioner **Dial**. I second it.

Chairman **Abourezk**. All those in favor raise your right hands.

[Show of hands.]

Those opposed.

[Show of hands.]

Two opposed, one abstains. I abstain.

Congressman YATES. Might I ask a question about one of the recommendations you abstained from voting on? "Congress should reject any legislative solutions which would completely eliminate claims of tribes based on aboriginal rights."

What if there is a legislative solution which has the approval of the tribes that eliminates some of their claims or they come to some kind of compromise?

Chairman ABOUREZK. This is advisory only.

Mr. TAYLOR. The paragraph leading into the recommendations specifically alludes to what you are referring to now.

Congressman MEEDS. Might the record show I disagree with the recommendations but I do think they should be made part of the report. I said that when I started.

Chairman ABOUREZK. All right. We have one partial abstention and one full abstention.

Congressman MEEDS. And one disagreement.

Chairman ABOUREZK. The chapter on the Maine land case has been adopted as part of the report in chapter 12.

Now, if I may come to the summary handed out, called "Policy for the Future," I am advised this reflects a summary of the recommendations throughout the book. Is that correct?

Mr. TAYLOR. Yes.

Chairman ABOUREZK. Let me ask for a motion for adoption. This will be in front of the report.

Congressman YATES. Might I ask for an explanation of IV? "We also reject the notion that the power of the tribe should be limited to their membership alone." What does that mean?

Chairman ABOUREZK. What page?

Congressman YATES. Second paragraph, IV, line 7.

Chairman ABOUREZK. I don't know what it means, either.

Mr. TAYLOR. What is intended is that the jurisdictional power of the tribe is not limited strictly to its own membership.

Congressman YATES. What does that mean?

Mr. TAYLOR. It may also exercise jurisdiction over non-Indians who are within reservation boundaries and whose activities are directly affecting the tribe. That could be criminal, civil, or regulatory in nature.

Chairman ABOUREZK. Don't you think you should say instead of "the power," "the jurisdictional reach"?

Congressman YATES. Doesn't the report speak for itself?

Mr. TAYLOR. I think it is a summary analysis of the major themes of the report.

Congressman YATES. You are treading onto a very complicated area. For one thing, you do not say that it should be limited to their membership alone on reservations. Are you going to have the power of the tribes over their members wherever they are or only on their reservation?

Mr. Taylor. We did not make reference to that in this introductory material.

Congressman Yates. You say: "We reject the notion that the power of the tribe should be limited to their membership alone."

What you are saying is that for other tribes or people of other races the tribes should have some control, but you do not say where they should have some control.

Mr. Taylor. We could insert in there that the power of the tribes "within their reservation boundaries" should not be limited to their own membership.

Commissioner Whitecrow. That is, in effect, what we have said all along.

Congressman Meeds. Are you trying to say: Tribes have power over their own citizens on their own trust properties?

Congressman Yates. That is not what they are saying. They say they have control over all citizens on tribal trust lands.

Chairman Abourezk. I think that should be changed to say: "We also reject the notion that the jurisdictional reach of tribes within Indian country"—that is more accurate—"should be limited to their own membership alone."

Congressman Meeds. It is still part of the city of Tacoma.

Mr. Taylor. Subject to the caveat on the record.

Chairman Abourezk. It reads, "We also reject the notion that the jurisdictional reach of the tribes within Indian country should be limited to their own membership alone."

Congressman Yates. That is saying it in another way.

Chairman Abourezk. Only more clearly.

Congressman Yates. I don't understand. What is the power of tribes in Indian country over the people who come there? Is it absolute over the white people who come there?

Mr. Taylor. Customary governmental jurisdictional authority. It can extend to law and order matters—speeding. If the opposite position is assumed here, tribes do not have the power to control speeding activities within reservations, theft of property, any other subject matter which governments customarily act upon.

Congressman Yates. All criminal cases?

Chairman Abourezk. No.

Congressman Yates. Suppose there is a murder?

Chairman Abourezk. That is under the Federal Crimes Act.

Congressman Yates. That is not what that said. I am trying to be precise. I don't think your revision helps us.

Congressman Meeds. The position of this Commission report is that Indian tribes have jurisdiction over all people, in all matters, on reservations which jurisdiction has not been abrogated by the U.S. Congress.

Chairman Abourezk. Let me say, Mr. Yates, that if you start at the beginning of that paragraph, it lays a foundation for the following statements: "This Commission has not proposed any legislative action with regard to the jurisdiction or authority of tribal governments."

What the Commission does is to reject a number of concepts which have been advanced by various people, and the concepts being rejected are outlined following that first sentence. I think that will clarify any ambiguity that anyone might have had with regard to that paragraph.

Congressman **Yates**. I am ready to vote but I would also like the record to show, with respect to that one sentence, I want to reserve.

Chairman **Abourezk**. Is the amendment I suggested agreed to?

"We also reject the notion that the jurisdictional reach of the tribes within Indian country should be limited to their own membership alone." Is there any objection to that amendment?

[No response.]

Chairman **Abourezk**. If not, the amendment is adopted.

Congressman **Meeds**. Speaking very quickly in opposition to the entire matter, I think it is a well-written rebuttal of the dissenting views. That is what it really turns out to be. I compliment those who wrote it. It is well written.

I take violent exception to the third paragraph on page I: "And yet the American Indian today finds himself in a position little better than that which he enjoyed in 1928 when the Meriam report was issued."

This is another one of those typical examples of overstatement by the people writing these things for us.

First of all, this is clearly not so. The record will show that we have a self-determination act. We have repudiated termination. We have a Health Care Improvement Act. We have all kinds of things. Legislation providing the right to govern. We have had all kinds of good legislation since 1928. Indeed, with some exceptions, most of the things have provided advances for Indians since 1928, particularly in the past 6 or 8 years a great number of better things. It is not perfect and it is still not good, but it is a hell of a lot better than it was in 1928, as stated in this report.

Again, I make my general observations with regard to my differences regarding sovereignty and with regard to jurisdiction and with regard to the trust status which are the three major issues in the dissent and the three major issues in "A Policy for the Future."

With that I will yield back the balance of my time.

Commissioner **Dial**. I have a question on restoration and recognition.

It seems to me that you are dealing with tribes here and you are speaking of 130 other tribes which never have been recognized by the Federal Government for various reasons. I have some quarrel, or question, with the word "tribe" because when you get into definition you could still leave out Indian people.

Mr. **Taylor**. Does anyone have a summary of our recommendations? I think we had special language on the chapter with regard to recognition.

Commissioner **Dial**. Chapter 11 was fine, but in this paper, "A Policy for the Future," I think you should have included a little something there, one or two statements, as to what you really said in chapter 11.

Mr. **Parker**. With an amendment the staff can conform this.

Mr. **Taylor**. That is what I was going to suggest. We should amend after the word "tribes" and add in the additional language?

Commissioner **Dial**. You see my point. Definition of a tribe could still leave out some people—like Lumbee people.

Chairman **Abourezk.** Do you have specific language you want to recommend?

Commissioner **Dial.** I don't like to come up with something off the top of my head. Pete knows what I am talking about.

Chairman **Abourezk.** Is it in the body of the report?

Commissioner **Dial** It would be like the body of the report in chapter 11.

Chairman **Abourezk.** It should be made to conform with that. Then there is no substantive change.

Any other questions or comments on this summary?

[No response.]

Chairman **Abourezk.** If not, without objection, the summary is adopted.

One other item. I have asked the staff to go through and take all of the recommendations which have been adopted by this Commission, lump them together, and they will be put probably editorially in front of the report itself, or be put in one section in addition to being at the end or beginning of each chapter, whatever they decide to do. It will not change language but just compile it together.

Commissioner **Dial.** Where will the statements of the five Commissioners be mentioned in the report?

Chairman **Abourezk.** All these separate views will appear at the end of the report. Congressman Meeds', mine, and those of the other Commissioners will appear at the end.

Congressman **Yates.** What is the deadline?

Chairman **Abourezk.** Separate views can be filed up until May 30. That is when it goes to the printer.

Congressman **Young.** Everybody else seems to have views. Does everybody feel badly if I put in no views?

Chairman **Abourezk.** I want to say this, Congressman Young: I have some views on your neglect in putting in views. However, I shall not mention them.

Congressman **Meeds.** I ask unanimous consent to insert—I don't care where—that letter from the GAO regarding the costs which I furnished to the chairman some time ago.

Chairman **Abourezk.** If I may see a copy of it.

Congressman **Meeds.** You will recall that I asked that the staff prepare an estimate of the costs of the implementation of this report. I was outvoted in having the staff do that.

I asked GAO to do that and GAO, in effect, said it could not be done because of policy questions.

Chairman **Abourezk.** Why would you want to put this in? I don't understand.

Congressman **Meeds.** Because I think it gives some idea of the costs or difficulties in trying to determine costs.

Chairman **Abourezk.** Personally, I would object. I object to your unanimous consent request.

Congressman **Meeds.** I will make it part of my separate dissenting views.

Chairman **Abourezk.** All right.

Commissioner **Borbridge.** I think when one considers inclusion, or possible inclusion, of some reference to cost, very often it is done so on the basis that this is good government and fiscal responsibility. I do not quarrel with that as a worthwhile motivation.

However, I find myself very much concerned that when we talk about costs we certainly do not seem to look at the Indian tribes and say: "If we are going to discuss dollars and cents, my friends, let's discuss what has happened over the last 100 or 150 years."

I find myself asking what agency will help us to determine what the cost of not doing justice to the Indian tribes would be.

What is the cost of the land erosion which has taken place over 100 years despite the fact we have had good, well-intentioned and, thank goodness, people who have cared about what has happened to the Indian people?

What has been the cost of loss of certain water rights?

What has been the cost of the erosion of pride that we have viewed?

We have even seen instances where services are provided and where there is an effort made to portray the presentation of those services and their provision as something which is entirely at the goodwill of the provider without any reference to the fact that in so doing this clearly erodes the pride of the recipients who may well have an entitlement that is not clearly spelled out.

Whenever we talk about costs I would like to talk about those costs, too. I would like to point out that they have not been computed. They have not been presented to us, either. If we are going to talk about the costs which are not clearly presented along with this report, let the record clearly state that the history of that cost has not been presented to this Commission.

There is one other thing I would state, too. I will start off by stating that my respected colleague on the Commission, Congressman Lloyd Meeds, has an outstanding record as far as Alaskan Natives and Indian affairs are concerned. After I am through presenting my views, you still have that place in my fishing boat because of my respect for what you have done. The record is very clear.

However, I was frankly very much concerned in quickly looking through the minority dissent which I had before, and I roughly touch on—"the majority report of this Commission is the product of one-sided advocacy in favor of American Indian tribes." I disagree with that.

"The interests of the United States, the States, and non-Indian citizens, if considered at all, were largely ignored." I vehemently disagree with that.

This advocacy was inevitable because five of the Commissioners are Indians and task forces had a majority. That to me is what made this so significantly different from any other effort we have had. This is why credibility is attached to this report.

I can only commend the authors of the law, and one of those authors was Congressman Meeds.

I further quote: "In support of its one-sided advocacy, the Commission's staff relied on language in the enabling legislation." How can we possibly look at a history of the development of such a subject as the history of our Indian people and not reach a conclusion that there is a great deal of catching up that has to be done and must be done? Yet, if we are to do our jobs as we hope we have done them, then it certainly will appear that we did come out on the side of advocacy.

If I am painted with a brush of advocacy, I will wear that coat very proudly.

Further: "This Commission failed to consider the fundamental and controversial issues in contemporary Indian law." I am very much concerned with that, because as a Commissioner I listened to all the views presented. I can only say, Mr. Chairman, that you gave ample opportunity for all of us to hear those views and to express our concerns and to debate them very freely. I feel that I did consider the fundamental and controversial issues. The fact we are discussing these matters today is a very clear indication that such was done.

Further: "Hence, the report is advocacy and cannot be relied upon as a statement of existing law nor as a statement of what future policy should be."

If we are not capable with the Indian representation, which makes us far different from any other effort we have ever had, of reaching some conclusions—tentative and final—as to what ought to be done with respect to Indian policy and the determination of the nature and the extent of the unique trust relationship existing between the Indians and the Federal Government, then I can only ask: Who is capable of accomplishing that task?

I submit to you that this was something that all of us undertook. I do not feel we have been at all sensitive about engaging in good, free discussion and debate. However, I do have to take exception to aspects of a dissent which departs from disagreeing with conclusions and disagreeing with premises.

These, after all, are part of the system of government under which we operate, and there is freedom to disagree. However, I take exception to having my capability questioned in terms of being able to insert some objectivity and fairness in the deliberations which have taken place. I may disagree with other elements of the report but as to those pertaining to interpretations of the law, conclusions, and policies, I can only respect those differences.

However, where the dissent so characterizes our effort I must not only respectfully, but I must vigorously, take exception to that. I am not at all happy to be painted in that fashion.

I want that on the record and that is why I presented it.

Chairman ABOUREZK. It is 5 o'clock and time to vote.

Congressman YATES. I have had an opportunity to read chapter 12—special circumstances which you so hurriedly called up for a vote without giving us the opportunity to read. I would like the record to show I would like to move to reconsider the vote, and change my vote to voting for it.

Chairman ABOUREZK. I thought you did vote for it.

Congressman YATES. I voted against it first.

Chairman ABOUREZK. All right. Do you want to ask unanimous consent to change your vote?

Congressman YATES. Yes; from no to aye.

Chairman ABOUREZK. Without objection, it is so ordered.

The witching hour has arrived. Question is on adoption of the report in toto, as amended.

Will the clerk call the roll?

The **Clerk.** Commissioner Borbridge?

Commissioner **Borbridge.** Yes.

The **Clerk.** Commissioner Bruce?

Commissioner **Bruce.** Yes.

The **Clerk.** Commissioner Deer?

Commissioner **Deer.** Yes.

The **Clerk.** Commissioner Dial?

Commissioner **Dial.** Yes.

The **Clerk.** Senator Hatfield?

[No response.]

The **Clerk.** Congressman Meeds?

Congressman **Meeds.** No.

The **Clerk.** Senator Metcalf?

[No response.]

The **Clerk.** Commissioner Whitecrow?

Commissioner **Whitecrow.** Yes.

The **Clerk.** Congressman Yates?

Congressman **Yates.** Aye.

The **Clerk.** Congressman Young?

Congressman **Young.** Yes.

The **Clerk.** Chairman Abourezk?

Chairman **Abourezk.** Aye.

The **Clerk.** Eight for, one against, and two absent.

Chairman **Abourezk.** I ask unanimous consent that since it will not change the outcome of the vote that the absent Commissioners be allowed to record themselves on this issue.

I shall direct the staff to poll the absent members tomorrow to determine how they would have voted.

Is there objection to that request?

[No response.]

Without objection, it is so ordered.

I want to express my thanks to everybody. This is our final and last meeting. Tomorrow, at 3 o'clock, we will present the report to both Houses of Congress. It will be printed beginning May 30 and it will be distributed to the public as soon as the printing is completed.

I express my thanks to everybody on this Commission, to everyone who contributed to the work, to the staff, to NCAI who offered some help over the weekend. We thank all of you very much for your help.

Also, I want to express appreciation to all of the agencies which provided information. I want to condemn those who withheld information.

Jake Whitecrow, thank you.

Commissioner **Whitecrow.** Mr. Chairman, I want to bring to the attention of the Commission some of the things that have been happening as a result of the dissenting opinion.

I, personally, have been receiving a great deal of, shall we say, flack with regard to the dissenting opinion. I have been experiencing a great deal of popularity, insofar as the press is concerned, recently having had the opportunity of appearing on national NBC nightly news and also being interviewed by channel 8 of Tulsa, Okla., and also with regard to approximately 1½ hour long-distance interview via telephone at a radio station in Oklahoma City just the day before yesterday.

The questions that were put to me brought about the fact that a great deal of education is needed in the so-called non-Indian community.

I would also like to express my opinion, insofar as my activities and involvement on this Commission are concerned, that I feel this has been one of the most educational periods of my entire life.

For those of you who supported my participation in this Commission, I want to say thanks for the opportunity of receiving such a tremendous education.

I, also, would like to make known that from the standpoint of my personal endeavors on this Commission—as an officer in the U.S. Army, and as a veteran of the Korean conflict, and also as a person who has on three separate occasions now pledged my life in the support and defense of the Constitution of the United States—I want it to be firmly known that all of the considerations for which I voted on this Commission were given as a result of deliberation and concerns insofar as my activity as a citizen of these United States is concerned, and the votes expressed by me were my votes determined from study, determined from the data and the information which was presented, and that I, too, if I am termed an advocate for American Indians when this is over, then so be it, and I shall, too, along with Commissioner Borbridge, wear that banner proudly.

I do want it to be known that I am a citizen of these United States. I support these United States totally, and I also feel that this country is large enough, big enough, strong enough, and wise enough to allow Indian nations to develop in an economic and viable atmosphere that will bring about a condition of which we can all be proud 15–20 years from now. Hopefully, it will not take that long.

Thank you.

Chairman **Abourezk**. Thank you.

Congressman **Meeds**. I, too, as vice chairman, would like to express my gratitude and my commendations to the Commissioners. The Indian Commissioners particularly, have been attentive, have been studious, have made some very tough decisions, and have carried forth their responsibilities as members of this Commission in the highest respect and the highest history of Indian people.

I think we owe them a great deal of commendations. With the exception of Mr. Yates and the chairman, I would have wished that the congressional members had been more attentive and been here more often and worked as hard as the Indian Commissioners have.

I also would like to express my commendation to the core staff. I think there is no secret that I had some substantial disagreements with some of the task forces and some of the conclusions they reached. I think the core staff has been a very capable group. I have my disagreements with them, but we can disagree without being disagreeable. There are disagreements on legal distinction. I think it would be difficult to find a better group, of what I have termed Indian advocates, as attorneys in the entire United States, and I am very serious about that.

Chairman **Abourezk**. He did it again.

Congressman MEEDS. I mean that. I think they have done a tremendous job and that they have been excellent in their presentation of information to this Commission.

To my colleagues on the Commission I also again suggest that I am sure this will be an historic document. I think we have all been privileged to have been part of this Commission. I certainly appreciate my membership on this Commission.

Chairman ABOUREZK. Anybody else before we adjourn?

[No response.]

Chairman ABOUREZK. If not——

Commissioner DIAL. In closing, I added one statement to this report to be sure it is not overlooked. It reads, "It is also imperative that the U.S. Government examine the rights and develop a policy of recognition of all Indian people not living on reservations."

I want to be sure that this statement is included.

I would also like to say that you, Mr. Chairman, Mr. Vice Chairman, Mr. Yates, and Mr. Young, are to be commended for attending the meetings and working diligently throughout the course of this work.

When all the recommendations of the Congress, in the halls of the Senate Chamber and the House, I hope that you will not forget the terminated and nonfederally recognized people. Also, I hope you will not forget reservation people.

Congressman YATES. May I at the conclusion——

Chairman ABOUREZK. Just one thing. Ask the absent congressional members whether they would give you their vote in a letter rather than over the phone.

Congressman YATES. I wanted to say how much I have enjoyed working with all the other members of the Commission. It has been a very extensive and enjoyable education for me. I have learned a great deal from the Commission as a whole and the Commissioners and the staff to whom I want to pay tribute for a job well done.

This is the last meeting. In a way I am sorry it is the last meeting. It has been a long road we have traveled. I have every confidence that the work we turn out will be a document that will be looked upon as being constructive, innovative, and will be used as the basis for future legislation and future policy.

Again it has been a pleasure and a privilege to work with all of you.

Commissioner BRUCE. Might I just say that I give my thanks and appreciation to you, the vice chairman, and those responsible for giving me the opportunity to serve as a Commissioner again. I consider it a great honor and privilege.

I want to give thanks to the staff and all those who have helped us. I hope this report will go down in history as one of the greatest.

Chairman ABOUREZK. John?

Commissioner BORBRIDGE. I certainly want to join in with what the Commissioners who spoke previously have stated so eloquently.

I also want to state for the record, Mr. Chairman, that I feel after the 2 years I have served that I finally learned a lot more about what this Indian business is all about and I am truly ready to serve effectively as a Commissioner.

Chairman ABOUREZK. We will organize another Commission.

Commissioner BORBRIDGE. I want particularly to acknowledge, Mr. Chairman, Mr. Vice Chairman, Congressman Yates, and Mr. Young, who joined us later. I counted the times you were there. I was conscious of your presence and conscious of your interest. Each of you has an outstanding record when it comes to Indian matters and concern.

I want to promise you I will be visiting you in the future as to what we will do with the report itself.

I want to express my deep appreciation to my fellow Indian Commissioners from whom I learned a great deal, and I also want to thank the staff for its efforts.

I am not used to having a green light go on at the hotel at 5:30 in the morning indicating a report is now there and I can start to peruse it.

Chairman **Abourezk**. We delivered.

Commissioner **Dial**. I certainly want to thank everyone for this great opportunity.

Congressman **Young**. I came on late. I liked what I saw. Perhaps I was not here as often as you might have wanted me, Mr. Chairman, but I think you have done a fine job. I don't get into people's differences of opinion but I served with Mr. Meeds for the past 5 years and he has done tremendous yeoman duty for us throughout the years. He is a very talented individual concerning this subject. I want the record perfectly clear on that. I consider him a friend of my State and in this total field.

I think everybody has done a good job. I hope tomorrow someone is there to receive the report.

Chairman **Abourezk**. Thank you.

Ada?

Commissioner **Deer**. I had no intention of making an extensive speech but after all these eloquent comments I think I have to make a statement or two.

First of all, I would like to commend you, Senator Abourezk and Vice Chairman Meeds, our very able Congressmen, Mr. Yates, and Mr. Young, for the leadership and the vision that you have shown in the work of the Commission. I concur in the comments of my fellow Indian Commissioners.

I would like to state that it has been a distinct honor, privilege, and pleasure to serve on this Commission.

I think this signifies a new role and a new partnership between the Indian people of the country and the Federal Government.

Chairman **Abourezk**. Thank you.

The Commission is adjourned.

Thank you all very much.

[Whereupon, at 5:15 p.m., the Commission adjourned.]

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